MANAGEMENT PROBLEMS AND CONTRACTING ACTIVITIES AT EPA LABORATORIES

Y 4.G 74/7:M 31/16

Management Problems and Contracting...

HEARING

BEFORE THE

ENVIRONMENT, ENERGY, AND NATURAL RESOURCES SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

JUNE 25, 1993

Printed for the use of the Committee on Government Operations

U.S. GOVERNMENT PRINTING OFFICE

74-135 CC WASHINGTON : 1993

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-043265-0

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MANAGEMENT PROBLEMS AND CONTRACTING ACTIVITIES AT EPA LABORATORIES

FRIDAY, JUNE 25, 1993

HOUSE OF REPRESENTATIVES,
ENVIRONMENT, ENERGY,
AND NATURAL RESOURCES SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2247, Rayburn House Office Building, Hon. James A. Hayes (acting chairman of the subcommittee) presiding.

Present: Representatives James A. Hayes and John L. Mica.

Also present: Sandra Harris, staff director; Sheila Canavan, professional staff member; Elisabeth Campbell, clerk; and Charli E. Coon, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF ACTING CHAIRMAN HAYES

Mr. HAYES. The subcommittee will please come to order.

The purpose of today's hearing is to review some of the management problems and some of the contracting activities at the Environmental Protection Agency's environmental research laboratories.

I very much appreciate the panels which have come to testify. I welcome the gentleman from Florida, and in order to expedite what we are doing this morning, first let me go through a few procedural chores.

Mr. Synar always swears in everyone, so I will follow his lead and do that.

Therefore, Mr. Martin and Mr. Konz—as a matter of fact, all the witnesses, we can do this at once and simply get you to rise and raise your right—goodness, we have more people than I thought.

[Witnesses sworn.]

Mr. HAYES. Now, see, if that was a group of politicians, we would all know that, in and of itself, was not true and we could not begin the hearing. [Laughter.]

Let's see what else I have.

I am going to put Mr. Synar's statement in the record and ask unanimous consent his opening statement be placed in the record and included at this point.

Hearing no objection, so do.

[The opening statement of Mr. Synar follows:]

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OPENING STATEMENT
HONORABLE MIKE SYNAR, CHAIRMAN
June 25, 1993

Today the Subcommittee on Environment, Energy and Natural Resources will be reviewing problems surrounding management of contracts and outside assistance agreements -- such as cooperative agreements, interagency agreements and grants -- at the Environmental Protection Agency's (EPA) twelve research laboratories. The focus of today's hearing will be a series of EPA Inspector General (IG) audits of the labs which identify example after example of waste, fraud, and abuse in laboratory activities involving outsiders.

Although the number of environmental statutes that the Agency administers has grown tremendously over the past several decades, in-house staffing levels at the research labs carrying out statutory mandates has remained constant or actually decreased over that period. As a result of Agency-wide budget cuts and strictly imposed Federal employee ceilings, EPA labs have become increasingly dependent upon private contractors and outside assistance agreements to accomplish their expanded research mission.

As we will see today, this over-reliance is unhealthy. It has fostered cozy relationships between the contractors and the EPA labs whereby laboratory personnel will do almost anything to retain an incumbent contractor, including obstructing fair and open competition for contracts. In addition, the IG found abuses in cooperative agreements between EPA labs and universities, in interagency agreements, and in grants -- all for the purpose of getting around established Agency procurement rules and procedures to get the job done. The indifferent attitude concerning prudent expenditure of taxpayer dollars on the part of laboratory employees and management is particularly disturbing and must change. Laboratory employees and managers who tolerate these kinds of wasteful activities must be held accountable.

The Office of Research and Development within EPA administers the laboratory programs, while the Agency's Office of Administration and Resources Management is responsible for administering contracts and outside assistance agreements at the labs. We will be asking these two divisions how the contracting abuses cited by the IG occurred and about why oversight of the laboratories' practices has been virtually non-existent. We will also be asking what kinds of corrective and disciplinary actions the Agency plans to take to ensure that these problems don't fall through the cracks in the future.

To its credit, the Agency has responded generally positively to the Inspector General's findings and some improvements seem to be on the horizon. However, as the IG will testify today, first steps need to be followed up on. A new administration has been in place for five months, but the Agency officials responsible for ensuring that these reforms are implemented have yet to be named or, in the case of the Office of Research and Development, confirmed by the Senate. That is unacceptable. Every day that the Assistant Administrator for Administration and Resources Management and the Assistant Administrator for Research and Development vacancies remain open is a day lost to ensuring real change throughout the Agency.

That is not to say that the career officials who have been acting in these positions have done a poor job; they have actually embraced many of the IG's recommendations and championed reform. But the fact remains that they are "short-termers" and managers and employees down the line know that someone new will be coming in to take their place very soon -- we hope. It is imperative that the Administrator impress upon the President the need to get her staff in place if we are to see measurable progress on these problems anytime soon. This hearing will serve as a benchmark for Administrator Browner and her new team and its commitment to ensuring that taxpayer dollars are spent wisely and in accordance with established rules and procedures. From here on out, problems identified will be on their watch.

Today's hearing will also examine the status of funding and research activities at the Agency's two radiation laboratories, located in Las Vegas, Nevada and Montgomery, Alabama. The radiation labs are severely underfunded and, in fact, must contract themselves out to other Federal agencies, like the Department of Energy, in order to continue to operate.

Finally, the Subcommittee will review issues relating to a recent IG review of a group of cooperative research and development agreements (CRADAs) entered into by the Agency's Cincinnati laboratory under the Federal Technology Transfer Act. The CRADAs were for the purpose of developing and selling "EPA certified" quality assurance materials to regulated industry. The Cincinnati lab receives a portion of the funds raised from the sale of the materials. EPA's Inspector General has raised serious concerns about the Agency's granting exclusive use of the "EPA certified" claim only to these five companies, and questions whether any new technology was indeed transferred to the CRADA companies.

Mr. HAYES. If there is anything procedural from the minority, it would be I think appropriate at this time—we have something to insert in the record, at your request, that we received. Is there anything else?

Mr. MICA. As we proceed, I will have some additional items that I would like made part of the record, but at this time—oh, the only other thing would be keeping the record open.

Mr. HAYES. Oh, certainly. In fact, at the close of the hearing, I will move by unanimous consent to do that for anything additional to be added and that, then, will become Mr. Synar and his staff's problem and I won't have to worry about it. [Laughter.]

I will not have an opening statement. I would like to welcome you, Mr. Martin. We have your statement, which, of course, will be included in its entirety in the record. And not really so much for the matter of time, as just for the matter of the fluency of listening to those things of concern, I would ask you to go through it and summarize it, at whatever length and inclusion you feel comfortable with. And then, as I say, I have some questions from Mr. Synar, and I am sure Mr. Mica does also.

So with that, Mr. Martin, thank you very much, and if you will proceed.

STATEMENT OF JOHN C. MARTIN, INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY KENNETH A. KONZ, ASSISTANT INSPECTOR GENERAL FOR AUDIT

Mr. MARTIN. All right, Mr. Hayes and Mr. Mica. I am here today to discuss a series of reviews we have issued over the last year of EPA's research and development laboratories. Specifically, we focused on how well these laboratories have managed contracts and funding agreements with organizations outside of EPA which conduct or supplement much of EPA's research.

EPA's Office of Research and Development is highly dependent on external support to accomplish its mission. For fiscal year 1993, the Office of Research and Development is expected to spend over $250 million for support obtained through contracts, cooperative agreements, grants, and interagency agreements. These services are provided in support of 12 research and development laboratories and additional field stations throughout the country.

Our audits found that EPA lab employees, designated as project officers and work assignment managers, usually had technical and scientific backgrounds. Their main concern, naturally, was their scientific work. The critical research they were doing took precedent over grant and contract management, a case of mission overmanagement.

Over the last year, the Office of the Inspector General has completed nine audit surveys of EPA laboratories at seven different locations. Five of these surveys have lead to full audits, of which we have now issued three final reports.

Today I thought it would be useful to discuss five broad issues that have been identified repeatedly as areas of concern at various research laboratories. These issues are: Work outside the scope of the contract; personal services; inadequate invoice review; limited competition; and, conflicts of interest.

We have reported that contractors frequently performed work that was outside the scope of the contract. The statement of work is the foundation of the contract. It should identify the work the contractor is legally obligated to perform, set boundaries within which the contractor must operate, and provide a tool for monitoring progress.

Instead, we found the contracts for lab support at EPA's research laboratories contained broad statements of work with undefined deliverables, resulting in indefinite contractor operations.

EPA research laboratories frequently have their technical support contractors perform work which was outside the scope of their contracts. For example, contract employees at EPA labs repaired lawn equipment and toilets, worked on lab's pickup trucks, painted walls, and put up shelving. In other instances, contractors performed library services or computer support functions.

The Federal Acquisition Regulation prohibits personal service contracts unless specifically authorized. Personal service contracts are prohibited because they violate civil service laws and regulations pertaining to hiring, retaining, and paying civil service employees. The key determinant to personal services is whether the government exercises ongoing supervision and control over contractor personnel.

At the labs we visited, contractor employees generally looked to EPA project managers for assignments and reviews of projects. This ongoing direction provided by EPA's scientists to contractor employees created a personal services relationship. Not only did EPA scientists direct the contractor employees' work, they interviewed prospective contractor employees and participated in the hiring decisions.

The EPA lab contracts we reviewed were cost reimbursable. Contractors have little incentive to control costs in this type of contract since it will be reimbursed for all reasonable allowable expenses. This puts a responsibility on the EPA project officer, first, to establish his or her own independent cost estimates; and, second, to verify invoices and other relevant cost data. EPA did not always prepare its own independent cost estimates and the contractors' estimates were usually accepted as submitted.

We reported on a limited number of violations which limited competition. One violation at the Duluth and Narragansett laboratories was artificially splitting, or deliberately underestimating the value of contracts to keep them under the $3 million ceiling. That permitted contracts to be awarded as sole source, small minority procurements.

Practices such as these have contributed to situations where contractors have worked at the same laboratories for almost 20 years, longer than any EPA employees.

Let me talk a little bit about EPA actions at these laboratories. EPA management has been very responsive in taking corrective actions for deficiencies in the management of external resources at the laboratories. The Office of Research and Development, with the assistance of the Contracts Management Division, initiated its own acquisition management improvement initiative to evaluate its management of external resources.

ORD is also ensuring that its guidance on the use of external agreements complies with the intent of applicable law and is establishing an acquisition specialist position at each laboratory to strengthen oversight of contracts and assistant agreements. The Grants Administration Division has a 3-year action plan for improving the award and administration of grant and cooperative agreements. This plan includes 31 specific actions to be completed over a 3-year period.

Other actions the Agency has taken include clearly identifying and physically separating contractor employees, providing more detailed work assignments, and performing closer oversight of activities which might promote the appearance of personal relationships.

The objectives of EPA's research and development labs are critical to EPA's overall mission, but we cannot condone circumvention of established regulations which protect the public interest and the integrity of the Agency. I am pleased with the way the Agency has responded so far to our concerns.

The Office of the Inspector General will continue to support the constructive actions EPA is taking to improve management of extramural resources not only at the laboratories but throughout the Agency.

This concludes my statement, Mr. Chairman and Mr. Mica.

I would be happy to answer your questions.

[The prepared statement of Mr. Martin follows:]

TESTIMONY OF JOHN C. MARTIN
INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES
OF THE COMMITTEE ON GOVERNMENT OPERATIONS

JUNE 25, 1993

Good morning, Mr. Chairman and members of the subcommittee. I am here today to discuss a series of reviews we have issued over the last year of EPA's research and development laboratories. More specifically, we focused on how well these laboratories have managed contracts and funding agreements with organizations outside EPA which conduct or supplement much of EPA's research.

This morning I will summarize the results of our audits of EPA laboratories to date, and also briefly discuss corrective actions EPA has planned or is in the process of implementing to address the deficiencies noted in our reports. As I have previously testified, EPA acquired greater statutory responsibilities under new environmental legislation but had only limited EPA in-house staff, which led to a greater dependence on external resources. In its determination to meet Agency goals, EPA has used outside resources without the necessary internal

controls and oversight to ensure that the best interests of the Government and the public were protected. Accomplishing EPA's environmental mission took precedence over good management.

BACKGROUND

EPA's Office of Research and Development (ORD) is highly dependent on extramural support to accomplish its mission. For fiscal 1993 the Office of Research and Development is expected to spend over $250 million for extramural support obtained through contracts, cooperative agreements, grants and interagency agreements. These services are provided in support of twelve research and development laboratories and additional field stations throughout the country. Services provided by contractors and other groups such as universities may be performed on-site at the laboratory, or off-site away from the laboratory.

EPA's research laboratory lab contracts are awarded by the Contracts Management Division in Cincinnati, and Research Triangle Park; and grants and cooperative agreements are awarded by the Grants Administration Division in Washington. These offices delegated contract management to project officers located at the ORD laboratories, who, in turn, often redelegated this responsibility to work assignment managers. The work assignment

managers, who usually had a vested interest in the research being performed, typically had only basic training in contracts management.

Project officers and work assignment managers at the labs usually had technical, scientific backgrounds. Their main concern was their scientific work. The critical research they were doing took precedence over grant and contract management -- an aspect of their job for which they expressed little affinity, if not open disdain. Again, this was a case of "mission over management."

EPA lab employees and contract employees working for the laboratory often lived and worked in relatively small communities. The ORD laboratories provided a environment where EPA employees and extramural employees frequently worked closely together on the same projects, often in the same physical space. These same employees, as would be expected, often socialized together outside the formal work environment. The long-term, close personal and professional relationships that developed made it difficult to administer extramural agreements in an arms-length fashion.

Some contractors have worked at the same EPA laboratories for almost 20 years -- and have been there longer than many EPA employees. To remain at the laboratories, these extramural employees were occasionally faced with changing jobs when their

employers were unseated by other contractors. With the support of Federal colleagues, they were able to remain within the laboratory community by jumping from one contractor to another. With strict Federal employment ceilings, but continuous growth, there was a strong desire on the part of laboratories to retain long-term extramural employees who were making important contributions to the research work at the labs. In fact, some laboratories grew to where they had more extramural employees on-site than EPA employees. At the EPA Laboratory in Corvallis Oregon, for instance, there were 63 full-time EPA employees and 244 extramural employees. This situation led to an overreliance on outside workers to conduct critical Agency functions. Given this set of circumstances, it was especially important that an effective overall contract management system was in place to ensure that these extramural resources were properly managed.

Unfortunately, however, our audits showed that significant improvements in ORD's oversight of contracts and assistance agreements was essential. Over the last year, the Office of Inspector General has completed nine audit surveys of EPA laboratories at seven different locations. Five of these surveys have led to full audits, for which we have now issued three final reports. Our current audit work of EPA's management of external resources at research and development laboratories started with a review of the Duluth, Minnesota laboratory, and was then expanded to the other laboratory locations. Today, I thought it would be

useful for the subcommittee if I discussed five broad issues that have been identified repeatedly as areas of concern at various EPA research laboratories. These issues are:

(1) Work outside the scope of the contract or agreement;
(2) Personal services;
(3) Inadequate invoice review;
(4) Limited competition; and
(5) Conflicts of interest.

WORK OUTSIDE THE SCOPE OF THE CONTRACT OR AGREEMENT

We have often reported that contractors frequently performed work that was outside the scope of the contract. The statement of work is the foundation of the contract. It should identify the work the contractor is legally obligated to perform, set boundaries within which the contractor must operate, and provide a tool for monitoring progress. Instead, we found that the contracts for lab support at EPA research and development laboratories contained broad statements of work with undefined deliverables, resulting in indefinite contractor operations.

controls, such as definite work products and completion dates, may be absent.

In our audits we found that ORD laboratories frequently had their technical support contractors perform work which was outside the scope of their contracts. For example, contract employees at EPA labs repaired lawn equipment and toilets, worked on the lab's pickup truck, painted walls, and put up shelving. In other instances contractors performed library services or computer support functions. In each of these instances, the work was clearly outside the scope of the contract.

In other instances, the broad scope of work included in ORD contracts permitted use of contractors in questionable circumstances. In one instance, a contract was set up to provide on-site support for an EPA laboratory in Florida, but for one assignment the contractor was paid over $1 million to provide support for the Valdez Alaska Oil Spill, over 4,000 miles away. In this instance, the contract was written so broadly that provisions for support of "field studies" was considered sufficient to permit the extensive use of this contractor in Alaska.

PERSONAL SERVICES AND INHERENTLY GOVERNMENTAL WORK

The Federal Acquisition Regulation (FAR) prohibits personal service contracts, unless specifically authorized. Personal service contracts are prohibited because they violate civil service laws and regulations pertaining to hiring, retaining and paying Federal civil service employees. Federal regulations outline six indicators for assessing whether a contract is personal in nature, but the key determinant is whether the Government exercises relatively continuous supervision and control over contractor personnel.

In the work environment at the EPA labs we visited, the contract employees generally looked to EPA project managers for assignments and reviews of projects. As a result, instructions to the contract staff came from EPA lead scientists who provided research direction and guidance to the contract staff. This happened because, as I mentioned earlier, specific projects often were not outlined in the statement of work of the contract or the written work assignments. It is therefore not surprising that EPA senior scientists directed the contract staff.

One EPA project officer told us that it is difficult to maintain an impersonal relationship with contract employees when you work with them for years on common projects in the same

office. This close working relationship is understandable. However, neither the project officers nor the EPA scientists working in the labs had the authority to supervise contract employees. Their continuous direction and guidance of contractor employees created a prohibited personal services relationship.

Not only did EPA scientists direct the contractor employees' work, they interviewed prospective contractor employees and participated in the hiring decisions. EPA scientists also recommended contractor employees for individual awards based on job performance.

Inherently governmental work is a type of prohibited activity for contractors because it is related to basic decision-making functions of the government that are critical to the accomplishment of Agency missions. We identified many instances where contractors performed critical and, we believe, inherently governmental work. For instance, assessing the quality of work performed by EPA and its contractors and the health and safety of personnel working at Federal facilities are Agency responsibilities, which we believe should not be delegated to contractors.

INADEQUATE REVIEW OF COST INFORMATION

The EPA lab contracts we reviewed were cost-reimbursable. The contractor has little incentive to control costs in this type of contract, since it will be reimbursed for all reasonable, allowable expenditures. This puts a responsibility on the Federal project officer, first, to establish his or her own independent cost estimate for each work assignment; and second, to verify contractor invoices against supporting information, such as timesheets, equipment usage records, and other relevant cost data.

The EPA project officer or assignment manager is supposed to develop the Government's work estimate for each assignment. To do this the assignment manager calculates the level of effort needed, the labor mix, the project milestones, equipment and travel requirements, and other costs expected to be reasonably incurred. The contractor then responds with a workplan describing how the work will be accomplished, and possibly with an alternate cost estimate if the contractor disagrees with the Government estimate.

At some of the labs we reviewed, we noted that EPA did not always independently prepare its own independent estimates, that the contractor's estimates were usually accepted as submitted,

and costs charged to assignments overran the estimates without approval of the Contracting Officer. EPA controls over the estimating and cost monitoring processes need to be strengthened.

We found that although the procedures used for invoice verification and payment varied from one lab to another, we reviewed none that we considered adequate to protect the Government's financial interest. At some labs, the EPA project officer would forward invoices to the assignment manager, who was more closely involved with the day-to-day activities of the contractor, so that he or she could review the invoices prior to payment. At other labs, the EPA project officer certified the invoices for payment without sending them to the assignment manager for comment.

LIMITED COMPETITION

Last year, I testified before another Committee of the House about the lengths the EPA lab at Duluth, Minnesota went to secure the services of a technology support firm owned by an ex-EPA employee. We reported on a number of violations, such as contract estimates artificially split and kept under the $3 million cap so the lab could award contracts as sole-source,

small, minority procurements. The lab also refused to renew the option years on a university contract which allowed this same firm to be awarded a $4.5 million contract for essentially the same work the university was doing for $300,000 less.

I wish I could report today that contract mismanagement was limited to the Duluth lab, but our reviews of other EPA research laboratories indicate that they too have problems ensuring a vigorous, competitive process in awarding multi-million dollar contracts for technical support. Three factors that limited competition were: (1) contracts being split and underestimated; (2) large modifications; and (3) restrictive contract specifications.

In addition to the Duluth lab, I mentioned earlier, EPA laboratories in both Narragansett, Rhode Island, and Athens, Georgia, appeared to have deliberately underestimated their potential value or split contracts into smaller procurements to stay under the $3 million cap for non-competitive small minority business procurements.

At the Narragansett lab, officials estimated the value of a contract for a suboffice at just under the $3 million ceiling so that the incumbent firm would not have to compete for the award. This action was taken even though the Contracts Management Division recommended that the contract be awarded competitively.

EPA's Contracts Management Division informed the Athens lab that a proposed $4.9 million contract would have to be competed, because it was over the $3 million ceiling. After learning of this decision, the lab withdrew its original estimate and resubmitted a procurement request for $2.98 million which was awarded to the incumbent contractor as a sole-source set-aside contract. During this same time frame, the Athens lab requested a second sole-source, set-aside contract for the same firm in the amount of $2.94 million which was eventually awarded nine months later. We believe these two non-competitive contracts took the place of the original request, and allowed the incumbent contractor to continue at the lab.

CONFLICTS OF INTEREST

In our first lab audit, conducted at the Duluth Research Laboratory, we reported that a high level employee solicited EPA contracts on behalf of his company while still an EPA employee. EPA awarded a $1 million non-competitive contract to this person's company eight months after he left EPA. These actions violated two prohibitions: (1) a Federal employee may not act as an agent on behalf of any corporation -- much less one wholly owned by the employee, and (2) EPA regulations prohibit non-competitive contract awards to former employees within one year of leaving the Agency.

We have reported potential conflicts of interest at other EPA research laboratories. Often the instances by themselves may not explicitly violate any ethical standards or conflict of interest regulations, but are nevertheless suspect and give the appearance of putting the Government in a compromising situation. For instance, at an EPA lab in Research Triangle Park, an EPA technical monitor was permitted to work 4 hours per week as a consultant to the on-site contractor he was monitoring. This individual received payment from the contractor for his consulting work at the same time he made decisions in his capacity as an EPA employee overseeing the contractor's work. The lab director approved this arrangement since the consulting work the individual was doing was not on EPA projects. Also, since the employee provided disclosure to the lab director, and received approval, there probably was no conflict of interest violation per se. However, these situations can certainly give the appearance of a potential for conflict and can cause a loss of confidence in EPA's ability to properly manage its extramural resources.

Another type of potential conflict of interest occurred at the Las Vegas lab. A former contractor employee who had been responsible for several EPA projects for this contractor was later hired by EPA. This individual was assigned the task of developing the technical specifications for recompeting a contract that was currently held by the contractor he used to work for. He was also involved in developing the key personnel

specifications included in the request for proposals. The Laboratory Director stated that this employee was hired precisely because of his experience, and it would be "shortsighted and perverse not to use those skills." Given the particular circumstances of this procurement action, we believe even an appearance of preferential treatment should be avoided, and the former contractor employee should not have been associated with this procurement action. This five-year, $16.5 million contract was awarded in 1990 to the incumbent.

Potential conflict of interest situations are more likely to arise at the EPA research laboratories because of the closer relationships between EPA personnel and contractor personnel. In non-urban locations especially, such as Duluth and Narragansett, it is not uncommon, for instance, for family members of an EPA employee to work for EPA contractors. These types of situations must be fully disclosed to ensure that EPA's ability to impartially manage its lab contracts is not impaired. The public is entitled to have complete confidence that official decisions are free from considerations of self-interest or favoritism.

EPA ACTIONS AT RESEARCH AND DEVELOPMENT LABORATORIES

EPA management has been very responsive in taking corrective actions for deficiencies in the management of extramural resources at EPA research laboratories. First of all, the Office of Research and Development initiated its own Acquisition

Management Improvement Initiative with the assistance of the Contracts Management Division to evaluate its management of extramural resources. Twelve of these reviews were completed by July 1992, and we incorporated the results into our audits. The Agency review teams have identified many of the same vulnerabilities that I have discussed this morning, such as personal services and potential conflicts of interest. We believe the Agency review teams have done a good job of identifying problems and suggesting corrective actions, which they term "control enhancements."

The Office of Research and Development is reviewing all of its guidance on extramural agreements to ensure it complies with the intent of applicable law and to revise its guidance when required. The Assistant Administrator for the Office of Research and Development has agreed that a fully qualified acquisition specialist position be established at each laboratory to strengthen oversight of contracts and assistance agreements. ORD is also providing additional training to project officers, and putting a performance standard for accountability of extramural resources in the performance agreements of lab directors.

In addition to improving contract management procedures, the Agency review teams have been the catalysts for specific actions concerning contractors. For instance, at the Duluth lab, EPA did not exercise its option to renew three contracts where there was limited competition, and at the Athens lab the Agency terminated

contracts which had been split to stay under the $3 million ceiling for non-competitive award. These contracts were allowed to expire at the end of 1992, with plans to pursue a competitive procurement for this work. EPA also ordered termination of a $5 million cooperative agreement with a university, and will initiate three competitive procurements instead. A Total Quality Action Team at the Athens lab will work to resolve the extramural management problems identified in our audit.

Other actions the Agency has taken include clearly identifying and physically separating contractor employees, providing more detailed work assignments, and performing closer oversight of activities which might promote the appearance of personal service relationships.

The Grants Administration Division has a three-year action plan for improving grants practices. This plan includes 31 specific actions to be completed over the three-year period. Several high priority actions will provide project officers with better training and guidance, which we believe is on target. Other action items are designed to increase competition and reduce appearances of favoritism in awarding grants and cooperative agreements. We believe these proposed actions address the major issues highlighted in our lab audits, but as of today, only the first item on the list (distributing a project

officers handbook) has been completed. We hope this action plan will indeed translate into action, and not be viewed as a set of good things to do if and when the resources and time become available.

These actions by the Office of Research and Development, the Grants Administration Division, and the Contracts Management Division are needed to address the widespread deficiencies in management of contracts and assistance agreements at the laboratories. This must be an ongoing effort, otherwise we believe conditions at the laboratories will revert back to sacrificing good contract management practices for the sake of expediency. The objectives of EPA's research and development laboratories are critical to EPA's overall mission, but we cannot condone circumvention of regulations which protect the public interest and the integrity of the Agency. I am pleased with the way the Agency has responded so far to our concerns. The Office of Inspector General will continue to support the constructive actions EPA is taking to improve management of extramural resources.

This concludes my prepared statement. I will be happy to answer any questions the subcommittee may have.

Mr. HAYES. Thank you very much.

At this time, I am going to defer to Mr. Mica for two purposes: One, to put his opening statement in the record; and then I would like to ask a few questions, then go back to him.

Since we are not crowded up here on the podium, we can work without any time constraints. So I will defer to the gentleman from Florida for the purposes of making a statement for the record.

Mr. MICA. Thank you, Mr. Chairman.

I just want to, in the interest of saving time here, ask that my opening statement be made a part of the record. First of all, let me say that I regret that Chairman Synar cannot be with us today, and also extend, for the record, my sympathy to him and his family on the death in his family.

I know we all miss him today and we were looking forward to him being a part of this hearing, and I am glad to see—well, I say that hesitatingly, Mr. Martin back, but appreciate your testimony this morning.

Thank you, sir.

Mr. HAYES. Thanks very much, and without objection, both the opening statement and those remarks will be placed into the record.

[The prepared statement of Mr. Mica follows:]

Remarks of the Honorable John L. Mica
before the
Subcommittee on Environment, Energy and Natural Resources
House Committee on Government Operations

June 25, 1993

Thank you Mr. Chairman. I would also like to thank Chairman Synar for calling this important hearing and I regret that he is unable to be with us today.

The focus of this hearing is to examine resource management problems identified by the Inspector General at various EPA laboratories. In previous testimony before this committee, the Inspector General described a disturbing pattern of conduct where EPA managers regularly undermined or ignored agency rules, and some cases, federal law.

I fear we are about to hear more of the same... this time with a good dose of conflict of interest added to the mix.

In fact, despite years of Inspector General and General Accounting Office review and recommendation, EPA contract programs still suffer from employee and contractor mismanagement, fraud, waste, and abuse.

Despite the good faith efforts of both the previous administrator, Mr. Reilly, and our current administrator, Ms. Browner, contract management continues to be a serious problem at EPA.

Mr. Chairman, I have asked the Attorney General to conduct a comprehensive review of the alarming pattern of fraud and general mismanagement of federal resources at EPA. I have also joined 27 of my colleagues in calling on Vice President Gore to make this agency the focus of his National Performance Review. Holding government employees and contractors accountable for their actions is critical to restoring public confidence in our government.

Mr. Chairman, only a government-wide commitment will bring about the fundamental changes necessary to end the culture of waste and mismanagement at EPA. Without sweeping change this agency will never fully achieve its mandate to protect and enhance our environment.

Mr. HAYES. Mr. Martin, what I will do is go through a couple of things Mr. Synar wanted to touch on. Prior to doing that, I want to say, I enjoyed reading your report. I want you to know I looked at it, starting a couple of evenings ago, when Mr. Synar asked me to do this. Ordinarily, after I come home after a congressional session, I will sit and watch some of the channels on cable that deal with young and rising comedians. I would suggest that if there are tryouts on MTV and other sources, you could read this report and I believe get a reaction almost as good as anyone who has been at it for years. I thoroughly enjoyed it.

I wondered, after taking a look at that, what it must have been like for you doing some of the field work there. I am used to looking at Superfund hearings and Superfund reports, and I noticed similar independent contractor problems.

We are here to examine the role of an agency, but I wonder how much of this we bring about in our own mandates. For example, in what way did the laboratory activities relate to mandates of law?

In addition, what percentage of the statutory requirements can be adequately carried out by EPA staff, given current staff levels?

Begin with the outside contracting; is it driven by the Agency or driven by the number of mandates on the Agency to do research that the Agency alone cannot handle?

Mr. MARTIN. I think you are starting at precisely the right point. That probably is the central problem that not only the Office of Research and Development has to grapple with but the whole Agency does, and particularly in mind of the President's current initiative to reduce the size of the Federal work force.

We have had a situation at EPA, and I think I have some figures that pertain to the Office of Research and Development, that show that from 1973 to 1992, the size of the Federal work force in the laboratories grew by two times. The size of the contractor dollars, the responsibility that they had for managing contractor funds, grew by almost 14 times. And so what has happened over a long period of time is that people, particularly in research and development, since that is what our topic is today, have been forced to deal with ever-increasing demands for scientific results, while the government has been—the powers to be in the government, the Congress and OMB—have been willing to give them funds to hire contractors but not more dollars to hire Federal employees to do some of this same work.

So I think that they have been driven, and our reports say that, basically forced to deal with things that normally would be handled by Federal employees, by how the funds have been distributed to them.

Mr. HAYES. You are saying, in effect, that there is a general understanding in all levels of government, not just EPA, executive and legislative branches, in an effort not to show an incredibly increasing Federal work force, despite increasing legal mandates of different Federal environmental laws, the idea that we will give you more money, recognizing that we have placed a burden on you, and we will give you more resources, but we don't want you to have more people because we don't want to go home to the constituencies in the place of the President around the country and say this number is increasing, not decreasing, or holding the same,

thus, the announcement of cutting the White House staff 25 percent, et cetera; is that a fair statement?

Mr. MARTIN. I believe it is basically a fair statement. I believe that the key ingredient is probably this: If you are going to have an increase of almost 14 times in the dollars that you are providing to an agency for contractor activities, you have to have some recognition of the oversight responsibility the Federal Government has for that money. And to just basically expect people to continue to operate with, even, in some cases, a declining Federal work force, in the face of increasing contractor responsibility, you are creating a situation where management problems of the kind we are talking about are probably going to just naturally develop.

Mr. HAYES. I am also going to make a guess. I would be interested to know your opinion about this, that virtually none of the people, in this instance, that you come into contact with, have been in a management or a contract management situation before. In other words, it is thrust upon them in their agency work now under EPA, but they didn't come from being a contractor, running subcontractors in their prior background.

I am also suspecting from the turnover, where you talked about contractors who have been there much longer than EPA employees, that the short-term matters issue also comes into play there.

In other words, one, we have people who are in laboratories, not because they are managers of contracts, but because they have a background that is laboratory related. Two, they are given, because of the mandates and because of the situation in which we are not adding direct employees, very little experience in their background of supervisory skills dealing with subcontractors. And third, they are going to be out the door before the subcontractors are, which leads to an even greater problem of who is actually running the show.

What would be your reaction to that impression? Is that——

Mr. MARTIN. I can't put it better than you just did.

Mr. HAYES. What a nice guy. We will have you back here.

Let me touch on some of the things Mr. Synar wants, and I want you to understand if some of these questions make no sense, it is because I am wording them as Mr. Synar would have if he were here. [Laughter.]

I know that you talk about the 12 environmental labs with, I believe, an aggregate budget of $450 million. I didn't see or recall, and I want to make sure the record shows how much of that is spent on the contracting and the outside agency, outside assistance agreements and the coop agreements and the interagency agreements and grants; can you break it down a bit?

Mr. MARTIN. About two-thirds.

Mr. HAYES. About two-thirds of that.

What has been the trend, with respect to EPA, with their staff available to oversee contracts and outside assistance; how do they do it?

Do they have, in fact, a procedural guidance? If so, what is it for their own oversight of the outside agreement?

Mr. MARTIN. Well, Mr. Synar apparently had the same thoughts you did, because this is really the same kind of an answer to the question that you just asked a few minutes ago. It is a situation

where generally the people at the laboratories are very experienced scientists.

They are not contract management people. They did not have that kind of a background. There are rules and regulations that are fairly clearcut about how things have to be done when you manage contracts.

The problem at EPA that is not limited just to research and development is this idea of mission over management; that, basically, it doesn't matter what we do procedurally we just have to get the job done.

But, unfortunately that creates some very serious ethical problems, if nothing else, for how the Agency does business. That is the answer to your question.

Mr. HAYES. It reminds me of reading portions of your report, also. There are references on more than one occasion to the fact that there seems to be an ignorance among many of those whom you interviewed as to what ethical standards and conflicts, in fact, existed, including within Federal laws, that they were totally unaware of.

In some instances, by the way, logic should have dictated to them that—with or without awareness of the statute—but in other instances, it appeared to me there was no background given on a management level as to compliance with other Federal requirements not directly mission related, and that they had no exposure to this from their EPA training or reviews, or whatever is done internally within the Agency.

Mr. MARTIN. The EPA has a fairly extensive ethics program.

Mr. HAYES. Attach that to the report. I want to talk to the guy who went to Montana State about his ethics background at EPA.

Mr. MARTIN. Again, I think that category of activities falls into the previous one you said, where it should be obvious on its face what you should do and not do. That kind of thing is an overt manipulation of the system, that is not an innocent kind of activity. There had to be a tremendous effort put into accomplishing that.

Mr. HAYES. Give me an idea. As I say, I am looking at examples and the executive summary. You have the nuts and bolts of the report. Percentagewise, what is the category they fall in, if you reviewed your whole report of criticism, which belong in the category? On its face, it should have been obvious that you don't pay for your own education through government funds, for example, and you didn't know about section 176.3(b) of the 1973 procurement regulations? Which percentage is which?

Mr. MARTIN. I have never estimated it that way and I can understand that you might not know about section 176.3(b), but that section, in most cases, has a logical basis to it and I believe that the employees have a percentage close to 100 percent of real understanding about right and wrong.

Mr. HAYES. In the sense that a contract with a firm, for example, that has a relative as a CEO or a major employee, you may not know the text of the statute but you should be able to figure out that somewhere there is a statute that will say that is not a real good idea, at a minimum, and is going to say that is a criminal offense, at the maximum.

Mr. MARTIN. That is exactly correct.

Mr. HAYES. I will get back to the things that make no sense now.

One of the problems identified were the fair and open competition obstructions, and at the Athens and Duluth labs you found that EPA artificially split those contracts. One was a $9 million split into threes, as I recall, which allowed underestimated contract amounts to be used to avoid competing in the contracts. How does that work?

Mr. MARTIN. One of the problems that we have at EPA is we tend to adopt contractors. Now, how we adopt them varies in different situations. Sometimes they happen to be ex-EPA employees, they happen to be excontractors of ours, perhaps working for another contractor; they may have just lucked into the contract. But once you become part of the EPA family, as I have testified for the last several years, there is a great tendency on the part of the Agency to include you forever in our process.

What that does is that it—and it is done for a simple fact—is this. If we are pleased with you as a contractor and you do well working for us, there is a general view, why should we bother getting anybody else to come in and do this work?

As I said in my testimony, we have situations in cases that at least employees, although maybe employees of different contractors, have been with us for 20 years, longer than any EPA employees have been in a particular location.

So once you are part of the family, you have a dominant position when it comes to recompeting for contracts. Now, if there are technical things that get in the way, such as laws or regulations, then we would tend to have a way of overcoming those technicalities. Such as, if you have a $9 million contract, just divide it in three, that makes it less than $3 million per subpiece of it and that gets under the congressionally mandated limits for those particular kinds of contracts. Or we can tailor the specifications so that you are the only competitor that can reasonably compete for the contract.

Well, what does that do to us? First of all, it gets us in bed and not at an arm's length transaction with an incumbent. It also effectively eliminates the need or the ability of other legitimate competitors to compete for those contracts.

Mr. HAYES. For example, I hope I am pronouncing it correctly, Narragansett had 185, give or take, companies that started out the process. You end up with six making a bid, and then you end up with the one you had to begin with. Is that example indicative of what you just said, that you tailor specifications to where people fall out, or you tailor them to the point where the shoe only fits one foot?

Mr. MARTIN. You have a great memory, because there is a lot of detail in that report. The statistics are even a little worse than you just said. One hundred and eighty-five started, only two actually bid. Six attended an intermediate conference where they were given bid information, but only two actually bid.

One of the two bidders was a completely unqualified bidder that could have never won the contract under any circumstances. The only real bidder then was the incumbent.

Mr. HAYES. So the other bidder was the one who was too naive to know it was rigged?

Mr. MARTIN. That is exactly right. Rigged is a slightly strong word but not a bad word.

Mr. HAYES. I am being reminded, that this was the contract where more than the contract proposal was the actual payment.

Mr. MARTIN. This is a situation where the company's bid was $31 million and the final contract when it was finally awarded was $37 million.

Mr. HAYES. Well, this person should be chairman of the Appropriations Committee.

I know the Office of Administration and Resources Management is responsible for soliciting and awarding contracts, but how do the Cincinnati division, and the division located at the Research Triangle Park in North Carolina, award contracts. How does that work? What is the mechanism by which this comes about?

Mr. MARTIN. The actual award of contracts is handled in the part of EPA known as the Office of Administration and Resources Management. They have a separate acquisition function. For whatever purposes, and I don't think that it is wrong the way they have done it, they have decided that those contracts that are going to be awarded within the Office of Research and Development will be handled out of two of their suboffices, one in Cincinnati and one at RTP. That is their decision and we don't find any problem with that. The actual day-to-day work on the contract, the oversight of the contract, is handled by people within the offices responsible for it.

Mr. HAYES. In this instance, though, the Cincinnati office, if I understand your report, questioned the contract.

Mr. MARTIN. That is right.

Mr. HAYES. So who is it signed off by? By Cincinnati, or did it go to the Grants Administration Division arm here in Washington?

Mr. MARTIN. Those are two separate functions in EPA. Grants Administration is separate from contracts.

Mr. HAYES. If they raise questions, who is the official who finally signed off on the contract?

Mr. MARTIN. Well, regardless of who the individual person is, the same group that raised the questions eventually had to sign off on them. So they had—in other words, once they raised the questions, they had to be overcome in their arguments by the program office.

Mr. HAYES. I assume they are going up the ladder then. I don't care about the name but we are moving up the ladder.

Mr. MARTIN. Not necessarily, and Mr. Konz may know the details of that, but it does not necessarily mean you are moving up the ladder to make these decisions. Let's say the office routinely questioned the award of the contract and the program office rearranged the procurements, which is what they did, so that it then met the threshold requirements of the law. Then the package came back in. It is very possible the same people looked at it again.

Mr. HAYES. I see.

Mr. MARTIN. It was just restructured, in other words.

Mr. HAYES. Does resources management have a representative at each of these labs? How is their first contact agreement reached on proposals under either one of the divisions?

Mr. MARTIN. They do not have a representative. Their representatives are in these two places, in Cincinnati and RTP. But one of

the good things that the Office of Research and Development is doing is to now place a procurement specialist in each of their laboratories to be able to have them have more technical knowledge up front on how to properly award these instruments.

Mr. HAYES. That is a process or change that has begun when?

Mr. MARTIN. They are doing it right now.

Mr. HAYES. And I assume, then, the project officer will still be the person in lead responsibility for this contact with whomever is doing the contracting officer work?

Mr. MARTIN. That is right. I think the people you are going to have on the next panel would be very familiar with that process, because they are the ones who are handling it.

Mr. HAYES. Would you say that the procedures as they existed from your examination, both with the restrictions and competitive bidding, resulted in higher or lower cost to taxpayers?

Mr. Synar has these unbelievably tricky questions. I would never know the answer to that. I imagine that 36 instead of 31 is lower, but then, you know, who knows.

Mr. MARTIN. I think we can logically conclude that if you have a situation where you have 185 companies initially interested in a contract award and in the end only have one real bid, that one real bid could be virtually anything that the contractor wanted it to be without the pressures at least of competition, because there was no competition.

I think you could logically expect that the government is not getting the best deal it can in situations where there is not free and open competition. And we are not talking about small amounts of money here, obviously, you are in the area of $30 million.

Mr. HAYES. I want to go to Mr. Mica, but I want to ask you one question before I do. The relationships both with past employees and sometimes family members are uncovered in the way outside contracting is done. Is it just your impression from your experience that those with the knowledge know how to reach into government best, or is it your impression that the companies succeed because there is not an open and fair competition?

In other words, what I am saying is, I just got a feeling there might be a second barrier. Somebody who has worked for an agency, somebody associated with it knows the way it works better than somebody who has not, and my feeling is that is a problem but one that I am not sure is solved by just saying competition is fair.

One, how do we go beyond that and let competitors know what is fair? And, two, is somebody going to explain to you, better than is being done now, how to make access available and how to craft your proposal within the nuances and intrigues of what may look like an incredibly complicated governmental scheme? How do we do that better?

Mr. MARTIN. First of all, as you put it, there is no question the incredibly complicated system requires people who have the understanding and the abilities to work their way through the system. On the other hand, when we contacted many of the companies that did not bid on a variety of the contracts that we have talked about in our reports, the greatest single reason they gave us why they did not bid was not that they didn't understand the complexities of the system. It was because they thought they had no chance to

win, period. They just recognized our history and recognized the power of the incumbent and there is no point in them putting all that effort into bids that they basically have no belief they have a chance of winning.

Mr. HAYES. OK, thank you.

Let me go now to the gentleman from Florida for questions.

Mr. MICA. Thank you, Mr. Chairman.

Mr. Martin, I read your statement and heard your remarks this morning. I am still a bit dismayed by almost everything I hear coming out of the Agency, and your statement that is written here also indicates that people in the Agency still have not gotten the message. And I think to quote you, you cite in your formal statement here, "My office has reported instances at two EPA research laboratories where filed documentation for contracts and other files appeared sanitized."

I want to know a little more about this document cleansing that is going on; where were these two instances?

Mr. MARTIN. Both at the laboratory in Athens, GA and Narragansett, RI.

Mr. MICA. And when did this occur? It looks like you went in for—you were going in for an audit. What was the timing of this?

Mr. MARTIN. In the case of Narragansett, RI, we had a hearing in the U.S. Senate on March 2, 1992, where we talked about the problems of contracting in EPA. Two days later, March 4, we went into the laboratory in Narragansett, RI and announced to the management of the office that we would be coming in in the next several weeks to do audits of their technical support contracts and then we left.

The very next week, it was about 3 business days later, the head of management for the laboratory held a meeting with the staff where she instructed them to cleanse the files and shred the documents. Now, what was left in the files, then, were only the very basic original kinds of documents, not the working kinds of files that we would normally see as auditors.

What struck us so clearly was that there was a separate set of contracts that dealt with the operation and maintenance of the laboratory which we did not say we were going to audit. That set contained the normal kinds of things we would expect to see in an operating contract file.

So we had a complete contrast of day and night between the ones that were cleansed and shredded and the others that sat next to them that were normal files.

Mr. HAYES. If the gentleman would yield for just a moment?

Do you think they hired an outside contractor to shred or do you think they did it themselves?

Mr. MARTIN. They did it themselves.

Mr. MICA. A couple of followup questions. It looks like there was stonewalling or coaching of the employees; this is also in the same timeframe?

Mr. MARTIN. Yes, it is. You asked me about Athens, too. They even called their work operation "clean sweep."

Mr. MICA. Now, let me ask you a question. I am not an attorney; is it legal to cleanse the records?

Mr. MARTIN. Every Federal agency, first of all, operates under Federal records retention practices. These were totally done outside of those practices.

Mr. MICA. So can that be a violation, a criminal violation?

Mr. MARTIN. We don't believe that these cases amount to a—well, I have to be a little cautious here. There is a Federal violation of obstruction of an audit, and in some of these cases, where they have been fairly clearcut, we have gone to the U.S. attorneys involved in pursuit of those violations.

Mr. MICA. Did you do that in these instances.

Mr. MARTIN. I truthfully don't know, because the one——

Mr. MICA. Has the statute of limitations expired.

Mr. MARTIN. The investigations of some of these issues have not yet been finished, so I am reluctant to comment.

Mr. MICA. I think the way you set an example is by pursuing some of these things. If they are violating a criminal statute, then you set an example. The next person is not so inclined to destroy government documents or cleanse the files.

Have there been any instances of this going on since that period? Have you seen that?

Mr. MARTIN. We know of one other laboratory where it occurred, but Mr. Konz tells me it was in the same timeframe as the other two; that the third one, the work is yet to be finished on it.

Mr. MICA. What lab is that, can you say or would that jeopardize anything.

Mr. MARTIN. It is a laboratory in Florida.

Mr. MICA. Where? I'm afraid to ask.

Mr. MARTIN. Gulf Breeze, FL.

Mr. MICA. Gulf Breeze, FL.

You also cited in your testimony here that most of the problems come from cooperative agreements or interagency agreements; is that correct?

Mr. MARTIN. No, I think what we are saying is that——

Mr. MICA. Well, the ones you cited.

Mr. MARTIN. I think what we are saying is that we reached a point where we had seen so many problems in contracts that then we moved on to other types of funding instruments. So, then, we looked at cooperative agreements and at interagency agreements and found problems in all of those things.

So I think what we were basically saying here was that this was our newest work and we knew we had problems in contracts, but now we see we have problems with these other instruments also. So it is across the board. It is not just contracts, it is these other ways of funding.

Mr. MICA. Do you have any other instances where documents have been destroyed or shredded outside of the lab cases; or records altered prior to your coming in for an audit?

Mr. MARTIN. Mr. Konz, who has an excellent memory, doesn't recall any particular instances, although, I have a vague recollection that is an issue we have dealt with before, but I cannot give you any more specifics right now.

Mr. MICA. I had asked last time what remedies we could institute as far as Congress is concerned, and also, as you may know, I have asked the Attorney General to look at some of these viola-

tions; some of them I think verge on criminal, some of them you cited in your last hearing were in fact criminal. Are the people still in the positions in EPA that were involved in these cases? Are they still in government positions?

Mr. MARTIN. Those particular people, as far as I know, are still in their same positions.

Mr. MICA. So we still have the same problem.

I have recommended, and recommended to the Attorney General and to EPA, that there be a joint task force to go after some of these criminal cases of contract fraud, abuse, and mismanagement. Have you heard anything within the Agency about cooperative effort with the Department of Justice?

Mr. MARTIN. We have been contacted directly by the Attorney General's staff in response to your letter. They have been reviewing with us the cases that you had reference to; that work is going on right now.

Mr. MICA. Also, I think I had asked at that last hearing that EPA, and we can ask now because we have an Acting Assistant Administrator coming up, but I had asked or requested of the Agency for three or four items that have not been given to me.

One was a list of the Superfund sites where the statute of limitations will expire in the next 2 years—that has not been responded to; to EPA, requesting information on the impact of the Paperwork Reduction Act, and how that affects them in the pending cases; and, to EPA, requesting information on boiler and industrial furnace enforcement. These have not been responded to.

I have held off, just for the record, on naming names on the floor of the House of individuals who were involved in some of these cases pending. Hopefully, we will see some action by the Agency and the Department of Justice to pursue these.

Mr. MARTIN. Well, Mr. Mica, I really appreciate your consideration of that issue, because I want you to know that we have cases pending right now where the attorneys representing the people who are the subject of these actions have raised the question as to whether the congressional oversight of these matters is influencing the disciplinary action in a way that is improper, and that issue has been raised in these proceedings.

So it is very important for us to assure everyone that the employees receive the due process that they are entitled to and that there is no skewing of that process.

Mr. MICA. Well, you know, I have complied with your request in that regard, but I don't think I will let up in encouraging your Agency or the Department of Justice to pursue criminal action against any of the offenders and also for the creation of a task force between the Department of Justice and the Agency to pursue these; not just the laboratory, but Superfund and other contract mismanagement within the Agency.

Is contract splitting illegal?

Mr. MARTIN. There is not a violation of any criminal provisions of the law.

Mr. MICA. So what they did was legal. Has there been any recommendation to the Agency or to the Congress to address or, could we possibly correct legislatively, or by an internal rule, the contract splitting to get around the intent?

Mr. MARTIN. The law is clear. Your intent is clear. The minds of man will find its way around anything you write, if they want to. Our point has been for some time that this is a management problem.

Mr. MICA. The other thing, too, is since we put sort of the heat on, I guess I have done that, the chairman has done that, our subcommittee has done that, we have had the Senate, Senator Lautenberg, I believe, and several others have now put the heat on for some real crackdown. I saw that there was one settlement, this Louisiana Pacific settlement, that was made.

Do you think there is a rush within the Agency now to start some enforcement procedures?

And the other question I have is in that particular case it looked like there were severe penalties imposed but no criminal, and I have since learned that there are two pending grand jury investigations dealing with the company, with which they have settled. Do you feel there is a rush to settle these cases now in a civil fashion, ignore the criminal and just get the stuff done quickly because we are putting the heat on?

Mr. MARTIN. Well, I am not familiar with that particular case. I do know that the Agency has an excellent criminal investigative office, that is separate from mine, that recently has done a dramatic change in its operating procedures. They have a new head of the office who is from the Secret Service. He is doing an excellent job in pursuing criminal violations.

I don't have any indication that what you are saying is the case, but as I said, I am not familiar with that particular settlement.

Mr. MICA. Thank you.

I will yield back, thank you.

Mr. HAYES. Mr. Mica covered many of the things Mr. Synar had, there are a few I want to cover, though, before concluding your testimony.

I know that there are guidelines that are done by EPA and OMB that distinguish between governmental and nongovernmental functions but apparently they don't seem to work. What can be done to better that?

Can rewriting do a more thorough job or is there a way to broaden the learning curve on that division between governmental and nongovernmental?

Mr. MARTIN. I will ask Mr. Konz to comment more specifically.

Generally, first of all, there are rules. OMB has attempted to clarify the rules. There is legislation pending right now that will clarify them even more. So let me have Mr. Konz comment.

Mr. KONZ. With respect to inherently government, I think within most of the EPA program offices I have talked to, there still is a lot of gray left in the law. For example, I think in the area of development of regulations, I think the initial call by OMB on the process more or less related to, no, they could not make the final determination about what regulations could be, but they could work on and develop it and work on the process all the way up. And I think that the problem that we have seen is where is that fine line drawn between what they can do and what they cannot do.

With regard to congressional testimony, they cannot write congressional testimony, but can they gather information? Can they

draft it, which is then bought by somebody else, et cetera? OMB has moved to tighten it.

I think that during the elevation hearings earlier this year, this committee was taking a look at some changes overall to the procurement requirements, and one of the basic changes I think that was being considered was, one, to tighten up on inherently government services. And at that time, both we and Carol Browner, I think, endorsed those tightening up, to make clear what is not.

Once that is in place, then a basic educational process has to be gone through where not only do the people who work procurements need to understand, but all of those people who are involved in administering contracts need to clearly understand what they can and cannot do. And that will require a training exercise.

Mr. HAYES. What about the categories of exemployees who are then receiving contracts and, in some cases, family members in contracts? Do you think that can be handled by tighter language or does that cross into the boundary of you should know you have crossed the boundaries no matter what law you write?

If your goal is to get around a law, you will get around it; if your goal is to adhere to the law, you will adhere to it. How do we draft a law so that those who have the goal of getting around it have a liability on their own for doing so?

Mr. MARTIN. I think, you know, sometimes as I appear at these various hearings, I see the frustration of Members of Congress who want to try to improve the government process through a legislative remedy, and sometimes that just does not exist.

Just like we talked about earlier, you have passed laws that are very clear. There is no question about it. And many, many cases, like, for example, the new regulations that the Office of Government Ethics issue, that they are governmentwide regulations that apply to ethics situations. I think they are very clear.

We have management problems; we have people problems. We have to deal with those in a management way, not with new laws or regulations. It is our responsibility.

We are the executive people in this Agency and we have a responsibility to make things work and we can. You have drafted laws that are clear.

Mr. HAYES. Do we end up running into a barrier? In another life, I used to be an assistant district attorney. Sometimes in cases involving governments, we run into a barrier where knowledge by those who are charged with responsibility through government prohibited a clear prosecution.

For example, someone did something, and everybody else knew about it, therefore prohibiting a prosecution where the defense could clearly show this may have been done but it also was done with knowledge, therefore, making for a less than unsympathetic jury or judge. How do we get past that barrier as well?

Mr. MARTIN. That is Mr. Mica's favorite topic. That is what we were talking about earlier where he has already written to the Attorney General to ask a study of that issue. That point came up at the last hearing I testified at.

We are very religious about pursuing possible criminal violations with the Department of Justice. We don't decide ourselves whether matters should be prosecuted. One of the most frequently heard

reasons why these cases are not prosecuted is exactly the point you are raising; that the complicity of the government or government employees to the extent that everybody knows what is going on is a major defense argument.

Mr. HAYES. I wonder if a Federal agency has ever had a RICO action brought against it. Since banks have, I can think of nothing that would preclude that very circumstance from being the basis of a criminal prosecution which would provide both reimbursement of funds and let the whole team line up on the same day, before the same judge.

That is an interesting thought that I just might want to pass on Mr. Mica.

Mr. MICA. Mr. Chairman, would you let me interject a question here that I want to make sure gets asked?

During the last hearing, I brought forth a report, I think it was from the Center for Public Integrity, that said 80 percent of the contractors are former EPA employees, somewhere in that range. But I just wondered if there is any restriction on employees or former employees getting into the contracting business?

Mr. MARTIN. There are restrictions. I believe that once you leave the Agency there are a whole series of bars that are imposed both by law and regulation. One of the things does involve contracting back with the agency that you have just left and there are time restrictions for those things.

Mr. MICA. And are they being complied with, as you see?

Mr. MARTIN. As a matter of fact, probably the worst example of all the laboratory activities occurred in Duluth, MN, in the sense of the greatest combination of the worst violations and we issued that report some time ago.

That was a case where an EPA employee, while he was still an EPA employee, solicited for government contracts and then left the government and soon after leaving got one of the big contracts with us. So that the answer to your question is that we have the rules and regulations. They are not always adhered to.

Mr. HAYES. I'm sorry, Mr. Mica, have you concluded?

Mr. MICA. Well, I reserve, if I could come back when you're through. Go right ahead. And thank you for letting me ask that.

Mr. HAYES. I just want to use the one example. I think we've covered almost everything else in one form or another that Mr. Synar had wanted to cover with you as a witness, but let me use the example of the, give or take, $200,000 that was done first through a shared arrangement. Finally, EPA and Montana State arrangement ended up with a full sum for the Ph.D. degree that was paid for.

And I found something incredible also, which ties into the questions that Mr. Mica was asking earlier about complicity. Here's someone who had sought to go under a program that would be funded for the Ph.D. and been turned down, as I read your report, who then found a backdoor to do a sharing of funds, which was in fact not a sharing of funds but an arrangement where Montana State was reimbursed.

I don't fault Montana State because I have a feeling they probably know less about the prior maneuvering and the prior decision to turn down. But it is incredible to me that that could be done

without pretty clear knowledge from someone other than the person who is doing it. And where knowledge of that could not possibly be used as a barrier to accountability. In other words, that was a pretty clear case and I was just curious to know what the status of that is as far as recommendations as a consequence of your report. What I am disturbed by——

Mr. MARTIN. I know the answer, Mr. Hayes. I'm having trouble phrasing it properly because many of these matters are still pending.

Mr. HAYES. Then I'll leave that to Mr. Mica, a future question, a future hearing. Which lab had you said a moment ago was the one that you felt was the worst in problems in response?

Mr. MARTIN. The worst examples of the most egregious violations occurred in Duluth, MN.

Mr. HAYES. What worries me about everybody's complicity is they'll have a banner out saying we're No. 1 next time you drive by, because it doesn't seem anybody ever has an accountability. And I don't fault your Agency for that. It seems to be that you find stuff. It gets reported, you're accurate in your reporting, we will sit here and then it ends.

And if I were Carol Browner, I would be terrified and maybe reconsider that I had signed on to this. Because if I can't find a way to alter it, then I'm going to inherit it within a very short term of holding this office. And whether it is elevated to a Cabinet position, which I personally hope it is, or not is irrelevant to whether it is a Cabinet position that you would want to run around advertising that you hold if you can't do away with some other problems.

There's one other area I didn't cover. Let me briefly do that and then I will be concluded with this witness, and Mr. Mica can have final questions. You had in your audit the CRADAs that this EPA Cincinnati laboratory entered in with five private companies. The purpose was to develop, produce, and sell quality assurance reference materials used to calibrate and check the operation of environment laboratories testing equipment. Explain the nature of the CRADAs in general and your office's primary concern regarding the Cincinnati lab's use of them.

Mr. MARTIN. CRADA stands for cooperative research and development agreement. It's basically an instrument that was passed by Congress in the late 1980's that allows a government agency like EPA to enter into an agreement with another party, even a private company, to develop new technology. And I generally believe that the concept of CRADA is a good one. It's directed to new technology development.

But what happened in this case was that at around the same time this act was passed, the EPA laboratory in Cincinnati, which is responsible for our quality assurance programs around the country, had a need to fund its quality assurance program. And the method that it seized on to do this was to use the CRADA approach by developing agreements with five private companies to develop, to market, and to sell some 750,000 samples of reference materials, which are vials of liquid and other materials that are used to calibrate instruments.

The value of those samples, if all were sold, was something like $26 million. And we devised a system where we gave—these sam-

ples were government property—we gave these samples to the five companies that we entered into this agreement with and gave them the exclusive right to sell and market these samples. And we received a percentage of the profit from the sales. So what we did was we took government property, gave it to the private companies, had them sell it, and now we get a share of the profit. And we just don't see how that is technology improvement.

Mr. HAYES. Explain the labeling issue. I noticed also the EPA certified labeling. Explain that.

Mr. MARTIN. That is a very important part of this, because there is a private industry market to do the very same thing, to create and sell these same types of reference materials, these samples, these vials. However, EPA has the requirement that for those—that portion of these samples that we gave to these private companies—they have the right to use the EPA logo and the term "EPA certified" on those vials. And so they are in competition with the private industry that's developing basically the same thing——

Mr. HAYES. All right. So the EPA——

Mr. MARTIN [continuing]. That doesn't have that right.

Mr. HAYES. EPA has this agreement, this CRADA; but that does not, from what you're telling me, equate with the EPA certified standards, it's given——

Mr. MARTIN. It's much less than that.

Mr. HAYES. That's given through these five agreements?

Mr. MARTIN. The exclusive right to use the logo and the term "EPA certified" rests with the companies by which we have entered into this agreement where we receive profits back.

Mr. HAYES. In the course of your examination, were you able to give a guess or estimate as to what percentage of these markets is controlled by the five companies as opposed to the remaining 20 or so that apparently are in the same business of production?

Mr. MARTIN. I have heard a wild variety of figures, none of which I have seen evidence that I think is convincing as to what that percentage share is. I've seen numbers all the way from 5 percent to 40 percent. It seems to us that as this program continues, the market share would undoubtedly grow.

Common sense will tell you that if there are competing companies in a highly technical field, one offering a test sample that says "EPA certified" and another one that doesn't and they are roughly the same cost, which one would you buy if you were in a business where you needed technically accurate samples?

It's almost like we talked before about common sense in ethics rules. We're creating a situation where we have a regulatory function that requires the use of reference materials like this. So we are a regulatory body requiring the use of these samples, and then we're selling them.

Mr. HAYES. And I want to add to and make sure, and correct me if this is an incorrect statement, but what I got out of your report, too, is that the Technology Transfer Act of 1986, which was used to justify this activity, was criticized by you because this was not a new technology being transferred. Is that a fair statement?

Mr. MARTIN. Exactly right. All we did was give to these private companies 750,000 samples for them to sell. There was no technology transfer.

Mr. HAYES. And I know that EPA has a version, which of course I'm going to allow them to go into, but in anticipation of that, I know that the position was taken by the Agency that some safeguards could be added which would be protective and your recommendation is that the five contracts be canceled. Since I'm going to allow them to make their point, I would like you to make yours as to why you disagree that safeguards would be sufficient and why you recommended the stronger measures be taken.

Mr. MARTIN. First of all, the safeguards as they propose them are only intended to improve the actual operation of the program, to make it a better operating program, how they sell these things. That doesn't get at the basic question of whether from either an ethics point of view, a conflict of interest point of view, or even the point of view whether we have the right to do these things, whether we should be marketing and selling these kinds of samples.

I don't have any problem with the Technology Transfer Act in concept. I don't have any problem even if EPA under some legislative authority is able to recoup from the private sector through a fee process or otherwise to pay for things like its quality assurance program. But we're mixing apples and oranges here and all we're doing is we're using a law that Congress passed with very good intentions to sell a product that's funding part of our program. And we're doing it because of all the budget restraints, and I think out of a fear that we're going to somehow lose the ability to have this program if we don't have this side money flowing in. It's simply a money situation.

Mr. HAYES. All right. Mr. Martin, thank you for your testimony. I'm going to let Mr. Mica finish up. I think he still has a couple questions.

Mr. MICA. Mr. Martin, I have some additional questions relating to—is it CRADA?—that I would like to submit and ask for written response in an effort to move the hearing along, if you don't mind.

Mr. MARTIN. Certainly.

Mr. MICA. I will submit them to you and ask for a response both to myself and the committee.

A couple of questions. As you know, my intent in this whole thing is to try to clean the act up. You know, I think from what I've read so far, it looks like the Agency is kind of interested in rearranging the chairs on the deck of the Titanic, and I don't really want to be a part of that. I want to make certain that this Agency, when I leave, is operating efficiently and economically and in the best interest of the taxpayers.

I've asked for the task force, the joint task force in cooperative effort between EPA and Justice, that's one item. I was pleased to see that in the letter to the committee this morning from Carol Browner, that in part of that she has mentioned that they are working with the Vice President on his performance review and I had sent a letter, since your last appearance before us, to the Vice President asking that—and 27 Members joined me. In fact, do we have a copy of that? I would like to make that a copy of the record, if I may, Mr. Chairman.

Mr. HAYES. Oh, without objection, certainly, Mr. Mica.

[The letters can be found in the appendix.]

Mr. MICA. OK. And 27 Members joined in asking that that get underway, so we have another outside look at some of these activities and hopefully improve the performance of the Agency.

I also read the testimony of the next witnesses and it says EPA, just within the last week, I guess, has come up with a training course, technical training. It's called a technical project manager and training course for work assignment managers. Have you seen that?

Mr. KONZ. We haven't seen it. We've had it discussed with us about several things and we've been consulted about it, but we haven't seen the final course material.

Mr. MICA. Well, that disturbs me a little bit. Getting back to this complicity, you know, it seems like there could be a set of some basic rules that you don't violate in a manual, and say read this and sign here and you're responsible for your actions. Just like, Mr. Chairman, you know, they give us a copy of the ethics manual, it's that thick——

Mr. HAYES. They do?

Mr. MICA. Yes. But if you violate anything here, you hear about it and people go after you. Now, that really concerns me, that you all have not been a bigger part of that. And I'm going to ask the Agency, you know, to respond. It also says in here that they are going to require completion of the course during the next 2 years. Do you think that this particular project on——

Mr. HAYES. It's going to be taught at Montana State, right?

Mr. MICA. Are you satisfied with this? It doesn't even sound like you have been——

Mr. MARTIN. Well, let me make if I could, a kind of a broad statement before I answer that question. I don't have the slightest doubt that Carol Browner personally has an interest in seeing that these problems are corrected. I mean we've talked about it personally and I know she does.

Coming before you, Mr. Hayes, in just a few minutes, is the Acting Assistant Administrator for Research and Development, Gary Foley, who I have a great deal of regard for in how he has personally taken charge of trying to improve the operations of ORD; and the head of his management office, Clarence Mahan, is here today. But these people—Mr. Foley, for example, his permanent job is a lab director in North Carolina. So he'll be eventually returning to that position.

These people have given an awful lot to improve the process right now, but we need to have sustained leadership on the part of the incoming Assistant Administrator, as well as the sustained commitment of the Administrator, to make sure that the things that we've started are completed. And as you're reading yourself, Mr. Mica, many of these things are prospective, they haven't even begun yet. We need to make sure that they continue.

Mr. MICA. In that regard also, the Administrator sent a letter to the chairman and our committee here, she's not here today obviously. It says our program offices are establishing structures to provide up-to-date procurement guidance. Have you been involved in establishing those structures or are you aware of what this is in reference to?

Mr. MARTIN. We have had—Mr. Konz has had extensive working relationships with the procurement office at various levels as they develop all these programs.

Mr. MICA. Can you provide us with copies of the structures or what has taken place. This is mostly, I guess, in reference to the last year or since the Administrator has taken over.

Mr. KONZ. We can provide you copies of the draft documents and the proposals that we know are going through final clearance and determination now. And we'll be happy to do so.

Mr. MICA. OK. I would like to have copies of those. I would also ask unanimous consent that this article about the document cleansing could be made part of the record.

Mr. HAYES. Without objection.

[The information can be found in the appendix.]

Mr. MICA. And one final question and I'll let you go, Mr. Martin. I think you testified before the other body, the Senate, recently, and you discussed a matter that we had discussed in our previous hearing about fabricated Superfund site reports. And I think we had gotten into a little bit of the problems in region 9, San Francisco. Were there 275 documented fabricated cases, and can you supply me with a copy of those fabricated cases? Did you make reference to that in your testimony?

Mr. MARTIN. Yes.

Mr. MICA. Is it possible to get a copy of those?

Mr. MARTIN. Well, I don't think I can—I mean I'm not sure if you mean the files themselves or you mean our report.

Mr. MICA. Your report.

Mr. MARTIN. Oh, absolutely.

[The information can be found in subcommittee files.]

Mr. MICA. And I'd like to have a copy of that. And is the old region 9 Administrator who was in charge of this in San Francisco, region 9, has he now been elevated to the Washington office?

Mr. MARTIN. The former Administrator was a political appointee of the previous administration and is no longer a Federal employee as far as I know.

Mr. MICA. He has not been elevated?

Mr. MARTIN. No.

Mr. MICA. Has anybody involved in that been elevated, to your knowledge, to the Washington office?

Mr. MARTIN. We have given the region a draft of our findings in that matter. They have yet to respond to it officially. I don't know what official position the region has about our report yet. You might want to follow that because it could be a contentious area as to whether or not they agree with what occurred.

Mr. MICA. As soon as you have a copy of that report, can you make it available?

And again you're telling me that the regional Administrator in this case is history, he's no longer?

Mr. MARTIN. The regional Administrator, as in most of our other regions, were political appointees, and when the administration changed than regional Administrators left.

Mr. MICA. OK. Well, I'll be looking to see if any of the cast of characters has moved to Washington.

Thank you, Mr. Martin, I appreciate it.

Thank you, Mr. Chairman.

Mr. HAYES. Thank you very much, Mr. Martin.

Bring our last panel up. Let me have the record reflect the fact that you were previously sworn. And let me ask, Mr. Foley, I assume you will be doing your statement or will we have more than one person giving a direct statement?

Mr. FOLEY. One statement, Mr. Chairman.

Mr. HAYES. All right. Then if you don't mind, I would do just as I did before and ask you, as you know it will be placed in the record in its entirety, if you would cover the points which you feel are the most important or at your latitude dwell upon or skip through, whichever you think would be more beneficial. And of course we'll have questions and look forward to your answers upon its conclusion. Thanks very much.

STATEMENT OF GARY J. FOLEY, ACTING ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY ALVIN M. PESACHOWITZ, ACTING DEPUTY ASSISTANT ADMINISTRATOR FOR FINANCE AND ACQUISITION, OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT; SAM WINDHAM, ACTING DIRECTOR OF EPA'S NATIONAL AIR AND RADIATION ENVIRONMENTAL LABORATORY, MONTGOMERY, AL; COURTNEY RIORDAN, DIRECTOR, OFFICE OF ENVIRONMENTAL EFFECTS AND PROCESSES RESEARCH; CLARENCE MAHAN, DIRECTOR, OFFICE OF RESEARCH PROGRAM MANAGEMENT; THOMAS CLARK, DIRECTOR, ENVIRONMENTAL MONITORING SYSTEMS LABORATORY; MICHAEL E. BOWER, ACTING DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT; AND HARVEY G. PIPPEN, DIRECTOR, OFFICE OF GRANTS AND DEBARMENT

Mr. FOLEY. OK, thank you, Mr. Chairman.

I'm Gary J. Foley, EPA's Acting Assistant Administrator for Research and Development, and I do appreciate the opportunity to testify before you and your subcommittee on the management and resource issues surrounding EPA's laboratories. Administrator Browner regrets that she is unable to be here today, and conveys personally her commitment to increased sound fiscal management throughout the Agency. And she has provided the subcommittee with a letter which outlines her initiatives.

Let me take a minute and introduce the people that are here with me. Sitting next to me is Sam Windham, who is the Director of the National Air and Radiation Environmental Laboratory in Montgomery, AL. Sitting next to him is Alvin Pesachowitz, the Acting Deputy Assistant Administrator for Finance and Acquisition from the Office of Administration and Resources Management. And sitting next to him is Mike Bower, who is the Acting Director of the Office of Acquisition Management, also in the Office of Administration and Resources Management. We have a number of others that are here and have been sworn in that can assist with some of the questions that you might have. And they are in the row behind us.

Issues involving our contract management, our management of grants, cooperative agreements, and interagency agreements, have

been widely reported. The Administrator has emphasized the high priority she places on improving the Agency's management of these resources and building public confidence in the Agency. The Administrator has begun a series of initiatives to address problems and remove any barriers obstructing their path. She has stressed the principles of accountability, good management, clear guidance and expectations, and that discipline will form the basis for these initiatives.

For the Office of Research and Development which I represent, let me assure you that we also recognize the serious problems that have occurred in the management of Federal resources. We, along with the Agency, are taking the decisive steps to make sure that these resources are used appropriately, and that we are accountable for the proper use up and down the line.

Recognizing our vulnerability, let me talk a little bit about that, and just highlight some of the things that are in my testimony. We recognized our vulnerability first in a report called Workforce 1991, which made clear to the management that then was in charge of ORD that we had become much, much too reliant on onsite contractors and other non-Federal staff. And we have provided that, copies of that report, to the subcommittee. This heavy reliance on onsite contractors with limited Federal staff to conduct research and manage both onsite contracts and our offsite activities, raised concern within ORD about our ability to manage extramural activities.

We took a number of actions, starting in 1991, including reporting this in our FMFIA report to Congress in December 1990, creating a Council on Management Controls in June 1991, and starting an acquisition management improvement initiative in 1991, whose purpose was to go around and—well, we put together a team of people from ORD headquarters who are very knowledgeable about contract management with the OARM staff that was also knowledgeable in that area.

They visited all of the operating sites between December 1991 and July 1992, and over 500 managers and staff responsible for managing the extramural resources were involved. The objective was to assure that all staff understood the responsibilities and the rules and regulations and procedures regarding contracting management.

These reviews were also used to identify specific problems or issues. We often refer to these as the gray areas, things where policies and procedures were unclear, that needed to be addressed in order to improve ORD and EPA's stewardship of its extramural resources.

In addition, and in parallel with ORD's activities, the Office of the Inspector General initiated their reviews which you heard about from the last panel. We in ORD consider these inspector general audits and survey reports as a positive and as positive and beneficial to the management of ORD's extramural resources. We welcome the recommendations that the OIG has made. They will help us strengthen the actions toward improvement suggested by our own reviews, and they brought up some areas that we—that we didn't identify that also need our attention.

Right now, we are continuing to look at what it takes to change this mission over management culture at EPA and within ORD. I

have directed the development of an ORD-wide management improvement project, based on the FMFIA program.

In this project we are trying to, first, identify the management controls that need assessment or periodic review. In other words, we need to feel that we are going in, looking at what we're doing on a regular basis, doing it over and over again on a regular cycle. Second, we need the methodology to do this and a schedule for doing it. And third, we need to train the personnel to do this and to participate in the teams that do it.

This has several advantages. What I'm hoping to do with the 1,800 employees that we have in the Office of Research and Development is not only train them, you know, in what is in the regulations, what is in the rules, and how to interpret them in special cases, but by having them participate on audit teams, going out and looking at what is being done in other labs. It will be actually training in real situations of reviewing contract files and things like that, that will have the benefit of actually giving them hands-on training that then they can take that knowledge that they gain back. It will also build up more networking for when there are problems that are hard to deal with, that they can get to.

I have also reaffirmed the ORD directives that my predecessor first issued in March 1992. Let me emphasize again the importance that Administrator Browner and I and the others here at this table have placed on the need to improve the management of EPA and ORD's resources.

While extramural management is receiving the greatest attention, Administrator Browner has stated that how we utilize all our resources, people, facility and dollars, is critical to EPA's stewardship of the public moneys and the public trusts. It's essential that we carry out our mission to perform high quality research and to assist the Agency in the accomplishment of its mission in the most effective and efficient manner possible within the Agency and Federal rules and regulations.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Foley follows:]

TESTIMONY OF
GARY J. FOLEY
ACTING ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

June 25, 1993

Mr. Chairman, I am Gary J. Foley, EPA's Acting Assistant Administrator for Research and Development. I appreciate the opportunity to testify before you and your Subcommittee on the management and resource issues surrounding EPA's laboratories. Administrator Browner regrets that she is unable to be here today to convey personally her commitment to increase sound fiscal management throughout the Agency. She has provided the Subcommittee with a letter which outlines her initiatives.

With me at the table is Alvin Pesachowitz, the Acting Deputy Assistant Administrator for Finance and Acquisition, Office of Administration and Resources Management. Mr. Pesachowitz is available to answer questions about extramural resources management. Also with me today is Sam Windham, Acting Director of the National Air and Radiation Environmental Laboratory in Montgomery, Alabama He is available to answer questions regarding the status of funding and research activities at EPA's two radiation laboratories.

Issues involving EPA's management of contracts, grants, cooperative agreements, and interagency agreements have been widely reported. The Administrator has emphasized the high priority she places on improving the Agency's management of these resources and rebuilding public confidence in the Agency. The Administrator has begun a series of initiatives to address these problems and remove any barriers obstructing their path. She has stressed that the principles of accountability, good management, clear guidance and expectations, and discipline will form the basis for these initiatives.

The research that ORD conducts is vital for ensuring that the decisions made at EPA are based on sound science. Let me assure you that the Agency and all senior management recognize that serious problems have occurred in the management of Federal resources. We are taking decisive steps to make sure that these resources are used appropriately, and that we are accountable for proper use up and down the line.

BACKGROUND ON ORD OPERATIONS

Before discussing ORD's management of extramural resources, I would like to provide some background information on ORD and its operations. ORD is responsible for conducting research, development, and demonstration activities and for providing analytical, assessment, and technical support to Agency programs. Our activities are conducted in our laboratories and through extramural programs

conducted under research contracts, assistance agreements, and interagency agreements. ORD's twelve laboratories, four assessment offices, and three field stations are geographically dispersed throughout the country. These facilities employ approximately 1,700 Federal employees and 2,000 on-site contractors or other non-Federal personnel who support our in-house programs. Over the last 12 years (FY 1980-1992), our annual extramural budget (R&D and Superfund appropriations) has increased from $233 million to $324 million.

RECOGNIZING OUR VULNERABILITY

Several years ago, ORD analyzed its on-site work force. The resulting report, called Workforce '91, made clear the extent to which ORD had become reliant on on-site contractors and other non-Federal staff. We have provided copies of that report to the Subcommittee. The heavy reliance on on-site contractors, with limited Federal staff to conduct research and manage both the on-site contracts and our off-site activities, raised concerns within ORD about the ability to manage our extramural activities.

After additional assessments identified vulnerabilities in ORD's management of extramural resources, EPA reported ORD extramural management as a material internal control weakness in the Agency's Federal Managers' Financial Integrity Act (FMFIA) Report to the President and Congress in December 1990. The report also stated that EPA's management controls over its contractors needed strengthening.

The report indicated that personnel charged with managing contracts were inadequately trained to perform at an acceptable level of stewardship and competence.

The previous Assistant Administrator directed ORD Office and Laboratory Directors to devote increased attention to resolving these problems. To coordinate improvements and to assure ORD-wide participation, he established an ORD Council on Management Controls in June 1991. As one of its first actions, the Council was directed to review ORD's extramural resources management and make recommendations for corrective action.

ORD's ACQUISITION MANAGEMENT IMPROVEMENT INITIATIVE

In October 1991, the ORD Council on Management Controls recommended that representatives from ORD and the Office of Administration and Resources Management (OARM) visit each ORD facility to assess extramural management activities and to recommend improvements. A member of the Senior Executive Service was reassigned to a newly created position as ORD Acquisition Executive to lead this effort.

Based on a review of the issues and available analyses, the Acquisition Executive developed and began to implement an ORD-wide Acquisition Management Improvement Initiative. The goal of this initiative was to recommend

policy, procedural, organizational, and management changes to enhance ORD's ability to manage effectively and efficiently all extramural activities.

The first step in the review was a visit by a team of ORD and OARM staff to each of the ORD operating sites. These Acquisition Management Improvement Reviews occurred between December and July 1992. Over 500 ORD managers and staff responsible for managing extramural activities were involved.

Our objective was to assure that all ORD staff involved in managing contracts understood their responsibilities and the rules, regulations, and procedures regarding contract management. The reviews were also used to identify specific problems or issues that needed to be addressed in order to improve ORD's stewardship of its extramural resources.

The reviews demonstrated the need for new or improved policies in the following areas:

- Need for clear assignment of responsibility for the management of extramural resources;
- Need for greater involvement of senior management;
- Need for additional extramural resources management expertise;
- Need for more focused training on management and administration of extramural resources; and

- Need for an extramural resources planning system to relate integrated program requirements and manage lead-times.

In addition, the reviews identified numerous issues which were unique to individual facilities. These issues are addressed in the corrective action plans developed for each facility.

INSPECTOR GENERAL SURVEYS AND AUDITS

In addition to and parallel with ORD's activities, EPA's Office of the Inspector General (OIG) initiated a program to review ORD's laboratories. As you know, the OIG has issued eight survey and three audit reports on EPA's research and development laboratories to date.

ORD considers these Inspector General audits and survey reports as positive and beneficial to the management of ORD's extramural resources. The OIG recommendations strengthen the actions toward improvements suggested by ORD's own reviews, and in addition identified several areas needing our attention.

We have acted promptly on the OIG audits and surveys with proposed corrective action plans which address the immediate issues raised and which extend improvements throughout the ORD system. I am pleased to note that the Inspector General has accepted our plans as responsive and appropriate. Work has

begun on all of the 250 or so OIG recommendations we have received to date, some have been completed, and we expect completion of most of the remainder by September 30, 1993.

ORD IMPROVEMENT ACTIONS

We, in ORD, have only taken the first step in an on-going process to ensure a continuing emphasis on quality in the management of ORD's extramural resources. Each review identified specific and generic issues and problems. These findings and those of the OIG are being incorporated into action plans for each laboratory and office. To assess the progress that each ORD facility is making, I have directed that a second round of reviews be conducted this year. This round of reviews will also include an in-depth discussion of assistance agreements and interagency agreements.

Taking an even broader view in order to strengthen the review capacity, I have directed the development of an ORD-wide management improvement project based on the FMFIA program of improving management controls. This project has three phases. First is identification of management controls needing assessment or periodic review. Second is the development of a methodology for assessing the controls and determining a schedule for periodically reviewing the controls ORD-wide. Finally, this project will organize a program to inform and train all ORD personnel about this management improvement effort and their responsibilities

under it. The overall goal of this project is to strengthen ORD's management processes and activities. Periodic self-assessments and audits of management controls and practices will allow the ORD offices and laboratories to be proactive in their approach to improving management of extramural resources.

I have also reaffirmed three ORD directives first issued in March 1992. These directives require the laboratories to reduce their reliance on on-site, level-of-effort contracts, which have been the source of many of ORD's vulnerabilities. As replacement for on-site contracts, the laboratories are increasing the use of competitive contracts and involving the external scientific community more fully.

Other ORD management actions underway include:

- Clearly defining management of extramural resources as a primary responsibility of ORD's line managers and establishing accountability through management reviews and performance standards and assessments.
- Ensuring that each ORD laboratory and office has sufficient staff trained in acquisition and assistance policies to provide guidance and to assist senior managers in their extramural management activities. Senior managers responsible for extramural management activities along with the acquisition specialists form an ORD-wide acquisition network that serves both as a vehicle to disseminate the latest information and to provide a forum for discussion and resolution of emerging issues or problems.

- Developing training courses that are intended to supplement currently available courses and to address ORD specific issues. The first module of a Technical Project Management Training Course for work assignment managers was pilot tested last week. All ORD project officers and work assignment managers will be required to complete this course during the next two years.
- Preparing updated ORD policies, procedures, and guidance on management of extramural resources.

CONCLUSION

Let me again emphasize the importance that both Administrator Browner and I have placed on the need to improve the management of ORD's resources. While extramural management is receiving the greatest attention, she has stated that how we utilize all our resources--people, facilities, and dollars--is critical to EPA's stewardship of the public's monies and the public's trust. It is essential that we carry out our mission to perform high quality research and to assist the Agency in the accomplishment of its mission in the most effective and efficient manner possible within the existing Agency and Federal rules and regulations.

Mr. HAYES. Thank you. Mr. Mica has got a plane he's going to catch, so I am going to let him open the questioning until he has to leave. So I yield to the gentleman from Florida.

Mr. MICA. Thank you, Mr. Chairman.

Thank you for being here today. And first of all, I want to plunge right into this, some of the questions that I just asked Mr. Martin. In the letter that Carol Browner sent the committee this morning, it says "Our program offices are establishing structures to provide up-to-date procurement guidance." Can you tell me specifically how that's going to be activated within your part of the Agency?

Mr. FOLEY. Let me answer part of that, and then let Mr. Pesachowitz answer that as well, if——

Mr. MICA. Has that been formalized, have we something in writing?

Mr. PESACHOWITZ. What, the procedures?

Mr. MICA. Yes, she says, "Our program offices are establishing structures to provide up-to-date procurement guidance."

Mr. PESACHOWITZ. Right, there are several steps that we're taking in accordance with the recommendations from the standing committee report on contracts management that was issued last year. The key piece of that is the establishment of senior resource officials at the senior levels across the Agency.

Mr. MICA. Do you all have something written?

Mr. PESACHOWITZ. I believe that there is a draft of the senior resource official responsibilities about to go into agency review.

Mr. MICA. Have you seen that?

Mr. PESACHOWITZ. I have seen it, yes.

Mr. MICA. And can you make a copy—can we get a copy of the draft for the committee?

Mr. PESACHOWITZ. I would assume you can.

[The final document, signed May 27, 1993, can be found in the appendix.]

Mr. MICA. All right. And specifically how does it address some of the problems that have been cited by ORD?

Mr. PESACHOWITZ. I think one of the key pieces of that is what you have brought out earlier, to address the issue of accountability. The thrust of this is to place in the hands of senior officials with appropriate contract and extramural management training the accountability, including a signature, I believe, at least in the draft, is the requirement, to sign off that you are the responsible official.

Mr. MICA. So there will be some signoff provision anticipated?

Mr. PESACHOWITZ. That is anticipated.

Mr. MICA. OK. Can you give me a timetable as to the implementation of having that in place?

Mr. PESACHOWITZ. I believe that the draft is supposed to go into agency review in July or August. And it would normally take a couple months for it to complete its review process. So I could certainly assume that before the end of the calendar year we would have that in place.

Mr. FOLEY. ORD has moved out more quickly on this, recognizing the need because of the audits. We have a senior resource official. We named one over a year ago. We have started building up an acquisition manager's network in ORD, having an acquisition management official in each of the laboratories. It takes some time to

hire these people, but we have hired over one-third of them to date, and are proceeding as quickly as we can with the rest of them.

Mr. MICA. OK. We talked about, you know, contract fraud, waste, abuse here. How do we—how are you dealing—how many people have been disciplined, how many people have been fired or are still involved that have been involved in some of these cases of obvious public mistrust?

Mr. FOLEY. Within the Office of Research and Development, we have taken actions on four individuals at our Duluth laboratory, disciplinary actions on four individuals.

Mr. MICA. Are they still there?

Mr. FOLEY. One person has been removed from Federal service. One person was downgraded and changed in job. And one person received a suspension and one received a letter of reprimand.

Mr. MICA. How about the other two sites?

Mr. FOLEY. At the Athens lab, we have an investigations report from the inspector general. We have assigned a senior official to look at the information, the evidence in the report, and to make recommendations through the Agency's disciplinary process and that's proceeding. For the other labs, the inspector general's office hasn't finished their activities yet, so there is nothing that we can do at the Agency until we get the inspector general's investigation report.

Mr. MICA. In any part of the document, have you seen anything that informs the Federal employee or the contractor that by, you know, violation of these terms can lead to criminal prosecution?

Mr. FOLEY. Yes.

Mr. MICA. Is that part of it? Is that part of the draft that you have seen?

Mr. PESACHOWITZ. I don't recall whether that is in the draft, but certainly in all the ancillary guidance that's provided on issues such as ethics or procurement, there are statements that violations of those regulations do hold penalties.

Mr. MICA. You also had referred, and I asked Mr. Martin about this, the technical project management training course work. Now, that's separate from what we've been talking about or is this—is the draft included in—I mean the draft of your rules, et cetera, that you're coming up with, is that part of this project, or separate?

Mr. FOLEY. That material is covered in the training course. You're asking if knowledge of the potential disciplinary actions and things like that would be covered in a training course?

Mr. MICA. I would imagine you're preparing a document and some training materials. That's part of this technical project management training course?

Mr. FOLEY. Yes.

Mr. MICA. It is; OK. And that was pilot tested last week according to this?

Mr. FOLEY. Yes.

Mr. MICA. How come it will take 2 years to complete this? Is it a 1-week course or is it—is it possible to break this out and get, you know, some people to read simple rules and procedures and proceed with the course? What I'm concerned about is, I want to see some checkoff or accountability and responsibility and not drag

it out another 24 months with good intention. But do you think that could be divided up so there can be two parts to this?

Mr. FOLEY. Well, I will look into that, certainly. We have 1,800 employees in the Office of Research and Development to be trained, and they are at a number of locations. I don't know if 2 years is too long or not.

We've developed a training course that is designed for scientists, engineers, mathematicians, and technicians who do not come in with a background knowledge on contracting, how to review financial vouchers, to try to bring the detailed knowledge that they need to review documents that come in from contractors, and understand what they are dealing with. I think it's a very good training course. But I agree with you that we really need to get our people trained with that as quickly as possible.

Mr. MICA. In another area, it talks about the inspector general, in your comments here, and it says the inspector general recommends strength in actions toward improvements suggested by ORD's own review, and in addition has identified several areas needing our attention. Have those areas been also addressed in your training program that was just tested, or what are the——

Mr. FOLEY. Yes, they have.

Mr. MICA. They have been?

Mr. FOLEY. Yes.

Mr. MICA. What kinds of things is he talking about here?

Mr. FOLEY. Can I refer that question to Clarence Mahan, who has been more intimately involved in that?

Mr. MAHAN. The training course that we are talking about is a very specialized training course that we developed in the Office of Research and Development. These people take other training courses in contracts management and work management. But we developed this for scientists and engineers and this pilot program that we gave was to let people get in, critique it so that we could see whether or not we have to change the course as a result of those critiques.

But we basically have in that course the issues that the people in the labs themselves don't feel comfortable with, with the training that they have received. It's to cover the issues that they don't feel are covered elsewhere.

Mr. MICA. Now, this program that you're developing here deals primarily with Federal employees, right?

Mr. FOLEY. That is right.

Mr. MAHAN. Totally.

Mr. MICA. OK. What do we have on the other end? Is there any revision of documents or anything for the contractor, which is also the bulk of a lot of what's done with EPA? Is there anything underway for new guidelines or for some statements or revising any of the previous documents that they've signed to say that, you know, you have to do X, Y, and Z?

Mr. BOWER. The regulatory guidance that the contracts are awarded under and performed under remains the same and we constantly remind our contractors of that on an individual contract by contract basis. When there are problems with personal services or inherently governmental functions, our contracting officers clearly notify them that there has been a problem.

One of the things that we did do recently, sir, that I think is very germane to your question, is we took on an initiative within my office and reviewed a series of contracts that one particular firm has with us. It's ICF. And what we did with that indepth research on 10 contracts that ICF holds for us is, we went back to the program folks, back to the contracting officers, and to ICF, and went through in excruciating detail over all of the issues of concern that we found. So I think we've opened up a dialog there. And that's something that proved very successful in dealing with a significant firm such as ICF and we intend to do that more.

Mr. MICA. Well, just a recommendation, but it seems like if we're doing all this on the Federal employee side, that we ought to examine a little bit more closely our relationship and our documentation, our requirements of the private contractors. It also looks like from your statements, too, is that in replacement for onsite contracts, the laboratories are increasing the use of competitive contracts, which I don't have any problem with.

But what you have to do, and I come from business, not just a total government background, you make it very clear as to what your responsibility as a contractor is. And somewhere it doesn't appear to me that we're addressing that problem, too. So I think that we need to go back and look at the documentation, the requirements. It sounds like we're headed in the right direction for employees, but also for the contractors. And you're now going to have more competitive contracts and that concerns me in that we're doing the same thing over and over and it isn't working. We've got to build a little bit better mouse trap.

Mr. BOWER. Sir, if I may, I was just reminded that last summer we had a 2-day session with all of EPA's top contractors, I think 80 percent of the EPA contractors were represented there. We brought them in for a 2-day session and discussed all of these things, particularly audit cost principle type issues. We also talked about the inherently governmental functions and personal services thing. So that was a full 2-day session where most of our contractors and EPA discussed these issues.

Mr. MICA. I think the talking is good. I'd like to see something on paper that protects the government and the public interest a little bit more, if you could, you know, address that issue. Well, finally, I'm going to have to scoot, I may have a couple more questions, but I wish you would go back to the Administrator, and I've asked now for three or four items that have not been responded to. I do appreciate the response that has been given on one or two issues, but I think we have three or four outstanding.

Mr. FOLEY. OK.

Mr. MICA. And I would like to see those responses as soon as possible. I will also have some written questions relating to the CRADA program that I would like to submit to EPA and solicit your response. So you'll be down for a total of four responses required.

I do want to also thank you, Mr. Chairman, for providing me with as much time and also yielding to me in an effort to get me out of town quickly.

Mr. HAYES. We plan to talk about you after you leave, so that's the reason.

Mr. MICA. Thank you.

Mr. HAYES. I want to cover a few things for the record, too, much of which has been covered by Mr. Mica, but in particular I want to place something into the record. I know that there have been reactions to the IG reports, leading to actions taken by EPA. One of those was the termination of the contract that had been split to stay under the $3 million range, and there's a $5 million cooperative agreement with a university in favor of a more competitive agreement. But I would ask unanimous consent to enter into the record the EPA compliance agreement with AScI Corp., which was the contractor at the Duluth lab.

[The information can be found in the appendix.]

Mr. HAYES. I think that's here and that should be in the record. The reason I want to do that is that it was called to my attention that there's a statement in it right at the concluding paragraph that says that the EPA can still exercise its remaining option in the contract and retain AScI, even though it is barred from bidding on any contracts for 3 years in the future.

Is that, Mr. Foley, an ordinary statement on matters under suspension or is that a particular statement made in this instance?

I also already know for a fact, at least I believe I'm correct, that the EPA did not exercise its option. First of all, is that——

Mr. PESACHOWITZ. That's correct, we did not exercise the option.

Mr. HAYES. OK. But second, I was curious about the language as to why, if EPA had taken the action of barring bidding, it used the suspension language on this option.

Mr. FOLEY. We have Mr. Pippen here who can answer that.

Mr. HAYES. Let's blame him. That will show him, that will teach him to sit in the front row.

Mr. PIPPEN. Under the rules governing suspension and debarment, a suspension or debarment applies prospectively, that is to future contracts or grants, as opposed to active contracts. So whether it's a settlement agreement in general or an actual suspension or debarment, it would not apply to the provisions of existing contracts.

Mr. HAYES. What about other labs—I noticed in the wording of it—can the company bid on work at other laboratories other than the two sites designated?

Mr. PIPPEN. Under the compliance agreement for AScI, the prohibition or the agreement was that they would not enter into contracts or bid on contracts or grants at Duluth. And they would be prohibited from doing the same thing for noncompetitive procurement at Grosse Ile, which I think is an adjunct to a lab or a field lab, I'm not sure what the right characterization is, for the same period.

Mr. HAYES. That's what I'm saying, about other laboratories.

Mr. PIPPEN. Other laboratories beyond that, there were no prohibitions.

Mr. HAYES. OK. Is it an EPA policy not to renew when a recommendation is being made, or was the nonrenewal in this only not a reflection of policy, but simply an individual decision made on the basis of this particular company? In other words, is that a policy or is that just a choice made in this instance?

Mr. PIPPEN. I believe the answer to that question, if you are talking about the settlement agreement here——

Mr. HAYES. I'm talking about the election not to renew. If you have a recommendation that bars someone, is there an EPA policy or was that an independent decision made in this contract with this contract?

Mr. FOLEY. I think it was an independent decision made on this contract.

Mr. HAYES. Would it be your recommendation that a policy exist and that the Administrator, Secretary, holding that in limbo, inbetween position, be supportive of policy changes such as options which are not exercised if you have a recommendation that someone be terminated? In other words, let me reword it. Would you hire Dr. Kevorkian to babysit your kid?

Mr. PESACHOWITZ. I guess what I would say is that I don't have any—wouldn't necessarily have a strong objection to the policy. But there might be instances where the policy could come in conflict with the government's absolute need to finish a particular project or a particular scientific effort in this case. Hence having a firm policy in place that says that if a debarment action or suspension action occurs, this would automatically result in no renewal of an option could be to the detriment of the government. That's the only reason that I could think of for possibly not having the policy.

Mr. HAYES. Let me make a suggestion. If it's mission related and essential in order to retain it, you have to justify it. In other words, the answer ought to be no, the option won't be exercised, unless there's a public policy and public purpose related to a mission that is a reflection of that public policy, in which case it should be retained.

Mr. PESACHOWITZ. We would agree with that, and I will take that recommendation back to the Administrator.

Mr. HAYES. I was curious about this as well. I noticed that Mr. Synar was curious, too.

In the IG report on the day care center, the one thing that caught my attention was not whether or not day care is a good thing and there ought to be day care centers, but that only 3 of the 23 children at that center were children of Federal employees. How does that work?

In other words, I can see an involvement where we need Federal employees, but the number was so low, how did the involvement come about there when the ratio of nonemployees was so high?

Mr. FOLEY. Well, initially when the day care center was proposed and established, we had to demonstrate that at least 50 percent of the participation would be from Federal employees.

Mr. HAYES. Perhaps we could have contracted with outside children to go there. You think perhaps, you know, raise the level back up?

Mr. FOLEY. The reason that it fell off had to do with concerns about the management of the facility, sectarian issues because it was the YMCA, a Christian organization, that was running it. And so the Federal participation fell off. The parents' group disbanded that was overseeing it and once it came to our attention in headquarters, we closed the facility. This is the Narragansett Day Care Center.

Mr. HAYES. Then once again I understand clearly what you're saying about the initial policy, but there ought to be some means of followup so that if situations alter to that extent, then we're able to react appropriately at the agency level to the changing conditions and circumstances.

Mr. FOLEY. We agree. There is a GSA policy for the establishment of a center, but apparently there is no policy once it is established on how to proceed. So we're going to have to work with GSA to establish such a policy.

Mr. HAYES. Right. It was also an issue in that, I think there has to be a clarification of fund use, and I'm certain there's government regulation now, but if I recall correctly it was R&D funds that were going into the teacher's salary as well.

Mr. FOLEY. Yes.

Mr. HAYES. Which raised a separate and distinct issue, but once again, it's very difficult—Mr. Synar didn't say this. Here's my recommendation. Instead of having an ax to grind or sitting here yelling at EPA or agencies, we must take positive action. Here's my concern. It's not the instance, it's the level. Every lab they walk into is a disaster. But beyond the individual employees, here's the problem. You're never going to have, ever, a hearing on someone who's worked for EPA for 20 years who has been able to put their kids through school, who has retired, who looks back with pride upon environmental improvements they think they've been a part of.

Washington Post is never going to carry that story. We're never going to do a hearing. You're never going to have a front page of the Washington Post on a cop that goes to a ceremony that hands him a watch after 25 years and who is honored by the neighbors; it's not going to happen. You're not going to have one word in the newspaper about a Member of Congress who did anything whatsoever in public service.

Taking that as a given, that it comes with the territory, the problem is that if we allow the existence of so many innumerable examples, in this case in the laboratories, then it truly will make it very difficult to attract, hold, and retain Federal employees in general, and in this instance, though certainly it's not limited to your agencies, EPA employees in particular.

And when you look at turnover, I'm familiar with Superfund numbers much more than I am these numbers, but I notice the average stay mentioned in these reports is indeed short, and I think part of that is salary, granted, but I also think part of that is the difficulty with going through the constant barrage of assault on both programs and individual abuses. And what I'm driving at is that we owe policy, but we owe much more than that; we owe regulations but we owe way more than that.

We've got to find a way to make it better than it is, not with the main goal being punishment of the offenders, but with the main goal being some way to reward the honest, decent, and long hours and years of work and entice more people to stay. That, to me, is the message that you've got to take to Carol Browner, along with this one.

I'm going to vote, given the opportunity, to elevate EPA to Cabinet status, I think that's important for EPA and other governments

around the world are also doing so. But this is now her problem. From this benchmark on, from the moment after these investigations, it becomes her responsibility with that same goal in mind.

And I have no desire to sit through a series of hearings doing the same thing, none of us do. But you know they are going to happen if we don't go beyond just having regulations and get to the heart of being able to have consequences and enforcement. Let me cover a few other things—I think I can go into a second subject on accountability where I also want to get an exhibit into the record.

I want to ask unanimous consent to enter into the record the excerpts from the ORD publication entitled Workforce 1991 which was mentioned earlier in the hearing. It describes the offices, laboratories, and field sites and where they are located. And on page 17 there's a work force composition description. At 8 of the 12 R&D labs over 50 percent of the work force is so-called extramural, meaning that they are contractors, I assume, and cooperators. Is that what that word means?

[The information can be found in the appendix.]

Mr. WINDHAM. That's correct.

Mr. HAYES. All right. It summarizes the work force as of 1991. Is the current ratio about the same, higher, lower, or what?

[The information follows:]

ORD has not updated the FY '91 work force study, therefore current numbers are not available. We believe that the ratio of EPA employees to on-site extramural personnel has gone up because for the last two years ORD has been implementing a policy to reduce level-of-effort contracts, and to move instead toward competitive cooperative agreements and completion-form contracts. In addition, we have moved contractors off-site at several locations. However, the net loss of federal staffing in ORD over the past several years will moderate the impact of these contracting changes on the ratio.

Mr. FOLEY. Let me just check one thing. This represented the contractors that were onsite at our laboratories. We also employ a lot of contractors that work offsite.

Mr. HAYES. Right, I realize that. I was just wondering if the ratio has held since 1991, or has it altered?

Mr. FOLEY. There has been a considerable reduction in the number of contractors that are still onsite, because one of our corrective actions in looking at the area of personal services was that we didn't need the contractors onsite that were onsite. They could very readily perform the duties under the contract offsite under their own supervision and with less interaction than was occurring. And we were on the fringe of personal services in many cases. So the number of contractors onsite, has dropped off, and is continuing to drop off as we take these actions. I could try to provide some numbers for the record.

Mr. HAYES. I'm sure Mr. Synar would appreciate it being there at a later date. I'd also like unanimous consent to enter in the record the chart tracking ORD's staffing levels for the past 12 years. After an initial drop in the number of lab employees, the number since then has remained fairly constant, but I'm most curious to know if the workload has remained constant. And I suspect that with Superfund, and the Clean Water Act, that the answer to that question is that the workload has dramatically increased. But I'd like to know for the record if that is correct.

[The chart can be found in the appendix.]

Mr. FOLEY. We believe that the workload has increased. The amount of extramural dollars has increased.

Mr. HAYES. If under any structure, either that now in place or under one that you suggest and perhaps after some changes that the Administrator makes—we've got a lot of reports and finger pointing at abuse. Let's forget that for a moment and instead think toward crafting an accountability system. On this issue, where should the pinpoint of accountability be?

I don't mean an individual that does something, I mean the immediate chain of accountability. Who should we look to if those personnel under them have done something? That doesn't mean criminal liability, that doesn't mean culpability, I'm talking about as in a military structure, where's that first line of accountability for those below? Who should that be?

Mr. FOLEY. Well, we in ORD have recognized that it needs to be with the people that are in the Senior Executive Service, starting with the Assistant Administrator, then the office Directors, and the laboratory Directors. There should be clear accountability and understanding that they are accountable.

Mr. HAYES. Certainly in the sense of top down, but from bottom up, the answer would be the laboratory Director; is that what you are saying?

Mr. FOLEY. That is right.

Mr. HAYES. That was interesting.

Also, Mr. Synar noted this. I always was mystified by geography in high school, but I was even more mystified when I saw that the Narragansett, RI's laboratory was in Newport, OR. It sort of reminded me of my children's route home when they say they will be there in a minute.

I mean, I have nothing against either location, but the connection is a bizarre one, to say the least. How does that occur structurally and how in the world is that workable compared to proximity, and especially with the number of offices that exist across the country?

Mr. FOLEY. Can I ask Mr. Riordan to address that?

Mr. HAYES. Sure.

Mr. RIORDAN. I will try, Congressman. I am the office Director to which that laboratory presently reports. My predecessor changed the situation in Newport. It previously had reported to our Corvallis laboratory, but its primary mission was marine effects research associated with the Pacific Coast region, and the office Director had made the decision to consolidate all aquatics effects research in laboratories other than Corvallis and have Corvallis primarily focus on terrestrial problems.

So all the freshwater work that had been at Corvallis was transferred to Duluth, and the marine work at that field station was then made to report to Newport, which is one of our two marine effects research laboratories.

Mr. HAYES. So it is an impact of consolidation of a function.

Mr. RIORDAN. It was at that time, yes. I must say, however, Congressman, that presently we are reviewing the status.

Mr. HAYES. See, I noticed another one, too. The Las Vegas lab had its field office in Warrenton, VA. Is that a consolidation consequence of another function as well?

Mr. RIORDAN. That is a very specific function having to do with remote sensing, and the reason for that location in Virginia is that we have been operating under a dual-use program with the Defense Department, using some of their classified materials as part of our activities.

Mr. HAYES. But I guess the question that I am driving toward is that when we take a look—similar to base closings at consolidating functions, might it not be possible to move functions into the laboratory itself?

Now, I certainly do not have the background or experience to name them, but I suspect there are some where the function itself could be consolidated and where the proximity, which would have to lead, in my opinion, to more efficiency, could be accomplished. And perhaps you should look into an analysis of function and analysis of labs, and maybe make some recommendations based upon function, upon mission, and with full recognition that sometimes you have dual operations that could be consolidated.

Mr. FOLEY. The administrator has already recognized this and is going to be doing a number of studies in association with the national performance review to look at these matters, so we expect they will be addressed.

Mr. HAYES. For example, I have just been reminded that the Warrenton, VA lab is on the base closure list, which is going to mandate, I assume, that the dual function will be a single function, and it is going to mandate some change to occur there, and I suspect that would be a good target for review.

I am not suggesting there are not reasons that may compel you otherwise, but certainly this should compel an examination of status.

Mr. FOLEY. That is right.

Mr. HAYES. We are now entering an area I know nothing about. It is kind of like government. These really are for the record, on the radiation labs, and there was some questions that the chairman had. Let me just go through them.

Let me do it this way, since these are not questions from background I had initially, and since they come from another report. I don't need unanimous consent, because I am the only one left—while that would be a philosophical problem for former Vice President Dan Quayle, I am able to handle it. I am going to suggest that I provide you with the radiation lab questions and I would very much would appreciate your timely response. And, of course, at the end of this hearing the record will be left open, and I think it should be submitted. It belongs here appropriately on subject matter.

That gets us down to one thing I want to give you an opportunity to respond to, since I mentioned it earlier, and that was the market quality assurance materials. I don't think it is necessary to go back through the issue, which we heard the first time, I do think it only fair and necessary, one, because I know that you have a dispute on the cost of materials involved, and, two, I know you have a differing opinion on what actions should and could be taken.

So instead of asking the question, let me just let you run through those two issues; one on the cost issue and, two, on your opinion

as to what would be a remedial action and your reasons for believing that remedial action is sufficient rather than cancellation.

Mr. FOLEY. We brought Mr. Tom Clark, who is the Director of the Environmental Monitoring Systems Laboratory in Cincinnati that runs the five CRADAs, to answer those questions.

Mr. Clark.

Mr. CLARK. As far as cost is concerned, when this program was entered into, the rules and regulations that were being passed by the Clean Water Act, and by other acts, such as Superfund, have mandated that you have more and more regulations, so you have more and more items that need to be tested and more and more items that have to have standards for them, more and more items that have to have quality control materials. Therefore, as that increase took over and the budget remained the same, we had to look for other ways to be able to do our research in these areas.

These items are not items that you can get off the drugstore shelf, these are items that quite often have to have a lot of research to develop, to make sure of compatibility of chemical compounds and compatibility of materials.

Therefore, we looked for a way to operate this program and, after a study that we did exploring a number of options at that particular time, in 1986, the Federal Technology Transfer Act had been passed and we chose the Federal Technology Transfer Act. We did that because they are cooperative research and development agreements and we need cooperative research with industry.

So, we entered into these five agreements and we chose companies, by competing the program like you would a competitive contract. It wasn't necessary to do that. The law does not require that, but we wanted to get as much input as we could get into the program. We competed the program and we published the criteria for selecting the companies.

Then, when we did that, we found there is a cost of oversight of the program. For example, the program is designed that when batches of materials are produced by the cooperator, they are submitted to us for analysis. That is sometimes very expensive analysis, depending on what type of compound you are analyzing. The royalties that we have received back, or the moneys that we have received back through the agreements themselves have, at this point in time, not added up to the cost of the program.

I don't know if they will ever come up to the cost of the program. So it is not a program that is designed to put a lot of money into EPA's coffers. I don't believe it will put any money into the EPA coffers.

Therefore, as far as the cost is concerned, the figure was put out this morning that $26 million of inventory was transferred if all the samples were sold. Right now, I would say that approximately 90 percent of the inventory is being held by us and has not been transferred, nor will it ever be transferred. So only 10 percent of the inventory, approximately, will ever be transferred and sold.

So if you do a straight line function, you will get perhaps $2 million worth of inventory instead of $26 million worth of inventory. I am not exactly sure what all you want me to cover on cost, but that is where we are on cost.

I can tell you how much money we have taken in so far and what the cost of the program is. The cost of the program exceeded $300,000 a year for us to oversee the program, and in fiscal year 1991, we took in approximately $18,000; in fiscal year 1992, we took in approximately $250,000; and through 9 months of this fiscal year, we have taken in approximately $87,000.

Mr. HAYES. I want to make sure that I have followed this. Let me ask a couple of things. First of all, earlier you heard the remarks by those representing the inspector general that there was no new technology transferred. I think the record should indicate a response to that, if you agree or differ; and if you differ, why and how?

Mr. CLARK. The IG report mentions that there was no new technology transferred. In essence, I guess that depends on your definition of new, however, the Federal Technology Transfer Act does not require new technology to be transferred. Nowhere in the Federal Technology Transfer Act is new technology required to be transferred.

Mr. HAYES. Let me rephrase it, then. What made it technology that was transferred, if it was already being produced by other nongovernment entities?

Mr. CLARK. There is an industry out there that produces samples and produces standards similar to these. Some of them are even equivalent but some are not. There is no one manufacturer out there, I don't believe, that produces all the items that we have transferred.

It takes research to develop these materials, and we took the product of that research and transferred it to the cooperators. It is not a simple thing for some of these things to be made.

You can get a compound that is regulated that is very complex and it is very difficult to make it at a low level that will make it unique to a particular instrument or unique to a particular method.

So that type of technology was transferred. Also, the real crux of these agreements is to do cooperative research and development. There are so many more compounds that are needed than we have the budget or the capability to do, that we need the partnership and the cooperation with industry to do them, and that is really the crux of the cooperative research and development agreements.

Mr. HAYES. The question I gathered from your previous remarks, that I don't follow, is why is the inventory only going to be at the 10 percent level. In other words, if the thought was to enter into this activity, why is it not higher than 10 percent?

Mr. CLARK. All right. For 20-some odd years, we have produced these samples and given them away free, both knowns and standards. We have to cover a broad gamut of regulations. When we transferred these to the cooperators we really didn't transfer them. To be really technical about it, we hold the inventory. The inventory is not transferred until there is a need for that inventory.

Mr. HAYES. I had a friend that did that with crude oil and got in a world of trouble.

Mr. CLARK. You do, because there is a storage problem, et cetera.

At some point in time we will see what the marketplace is going to support—there is a lot of competition out there and a lot of people doing this. These companies we gave CRADAs to are not inter-

ested in holding or having samples transferred to them where they sell one every 2 years. However, we still are required to have some of these compounds.

We think it will be good to have these compounds to support the regulations of the people that are implementing them, like the States and the regions, so we are taking that inventory back, and in the process of taking that inventory back, still need to furnish those compounds on a case-by-case basis, or very seldom needed and would not be profitable for a company to enter into.

Mr. HAYES. Does the current inventory meet the certification standards of EPA, the inventory to which you refer or is some of it inventory that through alteration of standards would no longer be usable?

Mr. CLARK. The inventory that we have meets the standards, but there are other items in the inventory that are used in methodology, for example, that are being considered to be regulated in the future.

Mr. HAYES. Now, let me also make sure I understand the recommendations within the Agency. What, as a reaction to the IG report, is the Agency recommending to the Administrator as an action to be taken?

Mr. CLARK. The final IG report came out on March 31. ORD has 90 days to respond to it. That is up next week. We are drafting our final response now. It has not been approved or I have not yet seen the final response. But the response will be out next week.

Mr. HAYES. Then I think also we will leave the record open for that response.

[The information can be found in the appendix.]

Mr. HAYES. I think the answer to that was previously said, but let's get it into the record. With the volume constraints you mentioned and the cost then, and your comments earlier about EPA not doing it profitably, obviously, it is a cost offset of the total effort made into development.

For the companies themselves, is this a breakeven or a profitable operation for those five companies?

Mr. CLARK. Coincidentally, I had a meeting with four of the five companies yesterday.

Mr. HAYES. That is quite a coincidence.

Mr. CLARK. Which had been—trust me, it had been scheduled for a long time. You have heard that, trust me, up here before.

We are now in the process of auditing those companies, as it was one of the IG suggestions or recommendations that we needed to be more aggressive in determining how many samples are being sold.

As a matter of fact, we are now selling less than 20 percent of what we were giving away. And when I went to the companies, and some of them in great detail and some only peripherally, as to the extent of what they are doing, they said they are not breaking even, they are losing money. The companies are putting money out of their own pocket into this program. Some of them much more than others.

I would say some may be breaking even, but for the majority of them, the majority of the program, they are not breaking even yet.

Mr. HAYES. Thank you very much.

That concludes my questions. I understand Mr. Windham came solely because of the questions of radiation, and I apologize to you, but with the duration of the hearing and with the specialized nature of those, I would not otherwise have inconvenienced you had I known the length of the hearing. But I will appreciate the answers, and as I say, I am very sorry that we brought you here, but think of all the neat stuff you got to hear. It is great.

[The information can be found in the appendix.]

Mr. HAYES. I am going also to mention that I think we have already put Ms. Browner's letter in the record; if not, that clearly is in there by unanimous consent; and I would also request by unanimous consent that Mr. Hastert, our ranking minority member, and other members be permitted to submit written questions for the record and we request the witnesses respond to those questions as expediently as possible.

[The information can be found in the appendix.]

Mr. HAYES. And with that housekeeping, then, we will declare this hearing of the subcommittee to be adjourned. Thank you.

[NOTE.—Executive summaries of reports of audit mentioned in the hearing can be found in the appendix. The complete reports are filed for the record in the subcommittee files.]

[Whereupon, at 12 m. the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 24 1993

THE ADMINISTRATOR

Honorable Mike Synar
Chairman
Subcommittee on Environment, Energy,
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515-6145

Dear Mr. Chairman:

I regret that I cannot appear before the Subcommittee to testify at your hearing on management and resource issues at EPA laboratories. I would like, in this letter, to address not only the subject of your hearings but the broader issues arising from contract management confronting EPA.

One of my highest priorities, as Administrator, is to strengthen sound management values as part of the EPA mission. I believe this will improve the efficiency and effectiveness of the contracting and assistance processes and make them an integral part of our environmental mission.

Over several years, a number of audits by the Inspector General have underscored the long-standing nature of the Agency's problems in contracts management and our assistance management programs, including grants, cooperative agreements, interagency agreements, and financial systems. As a result of these past practices, taxpayers today are demanding from their government more accountability and better services for less money. I find these demands neither unrealistic nor unfounded.

I acknowledge that we have not yet solved all of our contracts and resource management problems. However, I am persuaded from my experience these past five months of the good will and dedication of our employees in working to solve the problems. We are, as an Agency, fully committed to seizing the opportunities before us to restore sound fiscal management.

The Standing Committee on Contracts Management has conducted a thorough, in-depth analysis of Agency contracts management. The report contained compelling arguments for change and discussed a culture of "mission over management". The report recommended major improvements, some of which have been completed.

Others are in various stages of implementation. As a result of problems in this area, contracts management was declared a material weakness and placed on OMB's High Risk list in the Fiscal Year 1992 Federal Managers' Financial Integrity Act report to the President and Congress.

I am fully committed to carrying out the recommendations of the Standing Committee on Contracts Management and the SWAT project on Civilian Agency Contracting in which we heavily participated. But the creation of this committee and the implementation of its recommendations are only the beginning of our journey.

In addition to our ongoing work to implement the Standing Committee Report recommendations and my own management initiatives, a wide range of agency employees are actively involved in focus groups under the National Performance Review specifically dedicated to assessing our progress in contracts and grants management. The work of these groups will add to the efforts already underway to correct these problems.

I would like to explain the terms "mission" and "management" at EPA, and how I view the relationship between the two. Over the years, two cultures have evolved in EPA. One is better known to the public: the employees who are focused on achieving the environmental mission. The other culture at EPA is made up of those employees who are focused on management, including contracting, grants and financial employees. We now understand that the two cultures have not been effectively working together. I firmly believe that by integrating the two cultures good management principles will become an integral part of our environmental mission. I see this endeavor as one of my most important tasks.

I have begun a series of initiatives to get to the roots of the problems and remove them from our path in building the Agency's future. The principles of accountability, good management, and discipline form the foundation for these initiatives. I am dedicated to carrying out these initiatives--they have my sustained personal attention.

Accountability means that my senior management team will be held responsible for their actions. While accountability starts at the top, all Agency personnel must also be held accountable. Before personnel can be held accountable, they must understand their responsibilities. These responsibilities encompass all Agency resources, contracts and assistance management programs, human and financial. To make sure this awareness of responsibilities exists, I am instituting appropriate training programs for Agency personnel.

Good management means we must develop the capability to balance our intramural and extramural resources, and provide Agency-wide leadership to detect and solve resource management issues and problems. It means we take steps to decrease our reliance on a small group of contractors. It means enhancing competition and providing greater contracting opportunities for small and small disadvantaged businesses. Good management also means we must be able to anticipate problems and opportunities so that we avoid lurching from crisis to crisis.

Further, I will implement initiatives to improve our disciplinary system. The system must send a clear message to EPA managers and staff about the gravity of resource management violations. In addition, this disciplinary system, and the penalties for these types of violations, must be clearly communicated so that EPA staff and its managers can be appropriately held accountable for resource management violations.

Over the past year there has been some improvement. Our program offices are establishing structures to provide up-to-date procurement guidance. Many have found effective ways to work with contracts and grants professionals to solve difficult management problems, and many are investing in ways to improve their ability to evaluate their contract and grant management practices.

Indeed, in the past year program offices have started to hire procurement professionals; devote additional resources to contracts and grants management; and find effective ways to involve top management in contracting and grants problem-solving. These are all ways we are bringing the two cultures together.

In conclusion, I am committed to working with my colleagues at EPA to make this Agency a model of efficiency and accountability in pursuit of our environmental mission. I hope this report is helpful to you as you inquire into management and resource issues at EPA laboratories. If I can be of further assistance, please let me know.

Sincerely,

Carol M. Browner

Carol M. Browner

JOHN L. MICA
7TH DISTRICT, FLORIDA

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON AVIATION
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT
GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON HUMAN RESOURCES AND INTERGOVERNMENTAL RELATIONS

Congress of the United States
House of Representatives
Washington, DC 20515-0907

May 26, 1993

REPLY TO
☐ 427 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4035
☐ 237 FERNWOOD BLVD
SUITE 105
FERN PARK, FL 32730
(407) 339-8080
☐ 840 DELTONA BLVD
SUITE G
DELTONA, FL 32725
(407) 860-1499
☐ 1396 DUNLAWTON AVE
SUITE 28
PORT ORANGE, FL 32127
(904) 756-9798

The Honorable Albert Gore, Jr.
Vice President of the United States
Old Executive Office Building
Washington, D.C. 20501

Dear Vice President Gore:

We are pleased that you are directing the Administration's comprehensive "National Performance Review" to identify and eliminate waste, fraud, and abuse in the federal government. We share your concern about government waste and inefficiency and look forward to your efforts to bring the quality revolution into the federal government.

In conducting your review, we urge you to confront the fraud and mismanagement problems that have plagued the Environmental Protection Agency (EPA). Despite years of General Accounting Office and EPA Inspector General review and recommendation, EPA programs still suffer from widespread employee and contractor mismanagement, fraud, waste, and abuse. In fact, in recent testimony before the House Government Operations Committee, EPA Inspector General John Martin indicated that congressional mandates, federal law, agency rules, and regulations are routinely undermined or ignored by EPA managers. We hope you would agree this is an intolerable situation. Holding federal employees and contractors accountable for their actions is critical to restoring public confidence in our government.

We are encouraged by the new Administrator's pledge to address these issues. However, we believe that only a government-wide commitment will bring about the fundamental changes necessary to end the culture of waste and mismanagement at EPA. Without sweeping change this agency will never fully achieve its mandate to protect and enhance our environment.

Sincerely,

John L. Mica
Member of Congress

Chris Cox
Member of Congress

Deborah Pryce
Member of Congress

Stephen Horn
Member of Congress

Ernest Istook, M.C.

William H. Zeliff, Jr., M.C.

Bill Clinger
Member of Congress

John M. McHugh
Member of Congress

Gary Condit
Member of Congress

Corrine Brown
Member of Congress

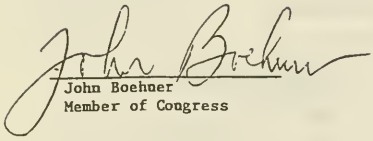
Steven Schiff
Member of Congress

Ileana Ros-Lehtinen
Member of Congress

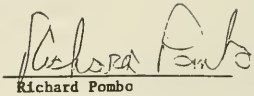
Rob Portman
Member of Congress

Karen L. Thurman
Member of Congress

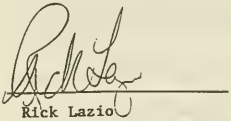
J. Dennis Hastert
Member of Congress



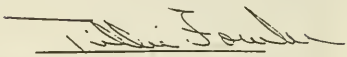
John Boehner
Member of Congress



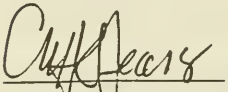
Richard Pombo
Member of Congress



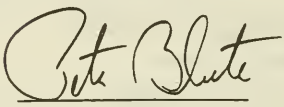
Rick Lazio
Member of Congress



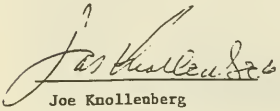
Tillie Fowler
Member of Congress



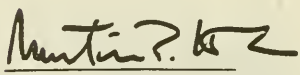
Cliff Stearns
Member of Congress



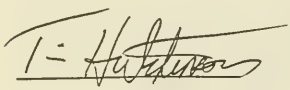
Peter Blute
Member of Congress



Joe Knollenberg
Member of Congress

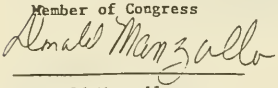


Martin R. Hoke
Member of Congress

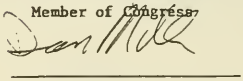


Tim Hutchinson
Member of Congress

Bill McCollum
Member of Congress



Donald Manzullo
Member of Congress



Dan Miller
Member of Congress

10 OMAHA WORLD-HERALD Wednesday, June 23, 1993

EPA Files Shredded To Cover Up Abuse

Washington (AP) — Under a barrage of criticism for contractor mismanagement and abuse, some Environmental Protection Agency officials shredded records and instructed employees to give canned testimony, the EPA's internal watchdog said Tuesday.

Inspector General John Martin cited two EPA Environmental Research Laboratories, in Athens, Ga., and Narragansett, R.I., where upon learning of an internal audit, employees were told to give "textbook answers" to questions and provide what was perceived as the "correct" information rather than the truth.

Documents were missing from the labs' files after the inspector general's office contacted them.

At Narragansett, which conducts marine ecosystem research, a research director "verbally directed Narragansett contract management staff to remove and shred documents from contract files," Martin said in an audit report.

He said investigation of those involved was continuing, and he declined to identify them, citing privacy concerns. He said no disciplinary action had yet been taken.

Martin discussed his findings at a hearing of the Senate Governmental Affairs Committee. Sen. John Glenn, D-Ohio, is the committee's chairman.

The June 16 report on the Narragansett lab is the latest in a series of reports detailing allegations of improper spending, conflicts of interest and other contract management problems at EPA facilities nationwide.

The findings on the Athens lab were contained in a separate inspector general report March 31.

EPA Administrator Carol Browner told the Senate committee she has instituted changes to provide greater accountability in contracting and has instructed her staff to "get to the roots of these problems" and correct them.

Ms. Browner said the administration supports the concepts of reform legislation introduced Tuesday by Sen. Frank Lautenberg, D-N.J., that is aimed at cutting back on EPA contracting and penalizing contractors who improperly spend government funds.

The EPA announced Tuesday that it had suspended a division of one of its biggest contractors, Computer Sciences Corp. of El Segundo, Calif., for making false statements in its proposal to win an EPA contract.

EPA officials said the company falsely claimed that its employees were qualified for the technical and operational services contract.

The agency already had curtailed the computer service company's $347 million in contracts following inspector general reports accusing the contractor of improper billings and conflicts of interest.

Martin accused the Athens lab of leaving itself vulnerable "to wasteful, abusive and potentially illegal practices," improperly using about $210,000 for constructing an office building and for excessive travel costs.

At Narragansett, Martin's report said, employees improperly used research funds for purchases such as office carpeting and plane tickets for visiting Chinese scientists. The lab engaged in improper use and "serious lack of control" over the petty cash fund, it said.

In one case, a scientist doing research with clams bought $1,450 worth of sea clams from a company operated by his son and paid $25 per bushel, nearly double the commercial rate, the report said.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 2 7 1993

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Establishing Senior Resource Officials

FROM: Sallyanne Harper, Acting Assistant Administrator

TO: Deputy Assistant Administrators
Principal Deputy General Counsel
Deputy Inspector General
Deputy Associate Administrators
Assistant Regional Administrators
Standing Committee for Contracts Management
Senior Procurement Officials

The purpose of this memorandum is to update you on the Administrator's finance and acquisition management initiatives, and propose a plan of implementation.

Expanded SPO Role

As you know, the Administrator has asked us to expand the responsibilities of the Senior Procurement Official (SPO) to include Program and Regional accountability for all extramural resources, including procurement (contracts and small purchases), assistance (grants, cooperative agreements and interagency agreements), and financial management, consistent with the Chief Financial Officers (CFO) Act of 1990. The title change to reflect this expanded role is the Senior Resource Official (SRO).

At the direction of the Administrator, delegation of SRO functions is to be limited, and an annual responsibility acceptance process will be established to ensure that SROs, their supervisors and their delegates fully understand the responsibilities involved in this function. I am proposing options for the Administrator's review on how to phase in these requirements with an implementation schedule.

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Administrator's Council

The Administrator is committed to developing a high level council to integrate management issues. I am proposing an Administrator's Resource and Management Integrity Council (ARMIC), which will expand the focus of the former Senior Council on Management Controls to include resource management issues as well as management integrity issues. The proposed ARMIC will be chaired by the Deputy Administrator and include selected Assistant and Regional Administrators, as well as Senior Resource Officials and Accountable Officials.

Resource Management Committee

As you have heard, we also need to expand the focus of the Standing Committee on Contracts Management to oversee progress on assistance, acquisition and finance issues. The new Resource Management Committee membership will include two Regional SROs rather than two Deputy Regional Administrators so that the Committee can become a stronger support for the work of both Headquarters and Regional SROs. The functions of the ARMIC and the Committee are spelled out in a draft EPA order, which is attached with a summary and chart.

Training

The Administrator has asked us to assure that SROs and political appointees receive executive training in resources management. I am developing a program to be presented late this fiscal year. You will also be able to participate in the development of appropriate ongoing training requirements as part of the training strategy and curriculum initiative.

Next Steps

I would very much like your comments on these developments in the next two weeks. The draft EPA order will soon go through the green border process, establishing the ARMIC, the new Committee and the SRO functions.

The EPA order replaces the earlier stand-alone SPO responsibility statement. In response to your earlier comments on the draft SPO responsibility statement, the EPA order emphasizes the oversight, advocacy and assessment role of the SRO. Much of the technical detail has been eliminated.

I would also like to hear your thoughts on an agenda for an Agencywide SRO meeting. I am planning a meeting in mid-September to give us an opportunity to discuss SRO functions and needs.

Our next steps are to review these proposals with the Administrator, and respond to your comments on the draft EPA Order.

After the review and approval process for the SRO function is complete, we will also revise assistance and procurement directives to include the SRO functions as appropriate.

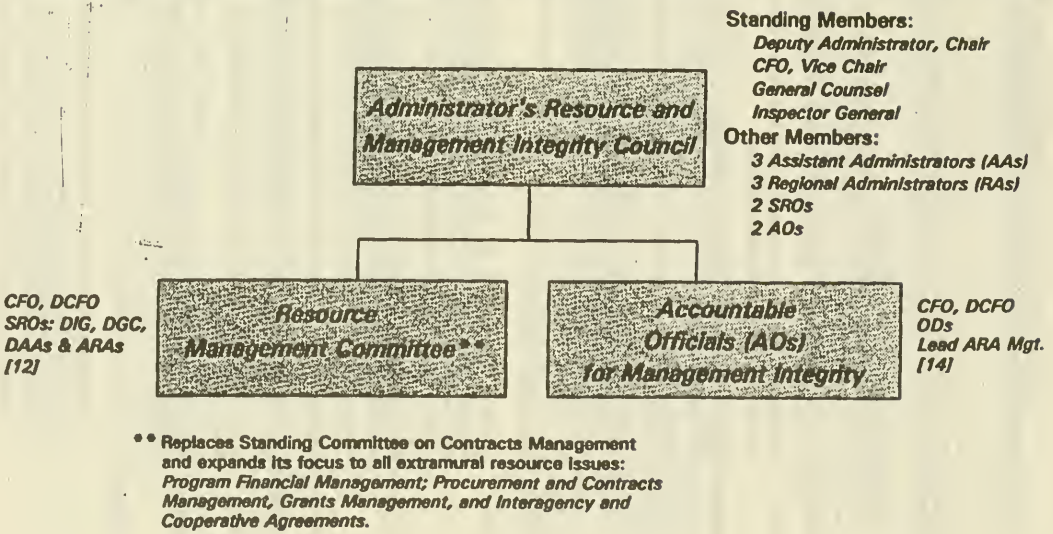
Attachments

cc: Robert Sussman
Jon Cannon
Kathy Aterno
Assistant Administrators
Regional Administrators
Deputy Regional Administrators

Administrator's Resource and Management Integrity Council

"I will establish a high-level council of the Agency's senior managers to not only integrate management with mission, but also to integrate use of all our various resource management tools."

Carol M. Browner, Administrator
March 10, 1993



** Replaces Standing Committee on Contracts Management and expands its focus to all extramural resource issues: *Program Financial Management; Procurement and Contracts Management, Grants Management, and Interagency and Cooperative Agreements.*

SUMMARY OF THE EPA ORDER ESTABLISHING THE ADMINISTRATOR'S RESOURCE AND MANAGEMENT INTEGRITY COUNCIL

PURPOSE OF THE ORDER: Establishes the Administrator's Resource and Management Integrity Council, *formerly the Senior Council on Management Controls*, and its key advisory groups:

- ***Resource Management Committee (RMC).***
- ***Accountable Officials (AO) for Management Integrity Network.***

ADMINISTRATOR'S RESOURCE AND MANAGEMENT INTEGRITY COUNCIL:

Mission: Permanent executive-level oversight and decision-making body for EPA's management integrity and resource management responsibilities.

Members: 5 permanent members [*Deputy Administrator, as chair; AA-OARM/CFO as vice-chair; AA-OPPE, IG; and, General Counsel*]; 10 roteting on 1-yeer terms [*3 AAs; 3 RAs; 2 SROs; 2 AOs.*]

Meetings: Principals only meet 3 times per year, convening additional meetings as necessary, to discuss:

- briefings by OMB, GAO, and EPA's IG on material weakness and high risk candidates;
- decisions on material weaknesses and high risk areas recommended to the Administrator;
- progress in strengthening and integrating Agency-wide resource management practices;
- other emerging management issues.

RESOURCE MANAGEMENT COMMITTEE (RMC):

Mission: Oversees improvement of resource management [*program financial management; procurement/contracts management; grants management; cooperative and interagency agreements.*] Replaces Standing Committee on Contracts Management. Assures effective implementation of SCCM recommendations.

Members: Members include: OARM AA/CFO as chair; OARM DAA-FA/DCFO as vice-chair; and Senior Resource Officials (SROs) [*Deputy IG; Deputy General Counsel; 6 DAAs and 2 ARAs*] accountable for their respective Office's ethical, effective resource management.

Meetings: Meeting frequency is determined by the Committee on an ongoing basis.

ACCOUNTABLE OFFICIALS (AO) FOR MANAGEMENT INTEGRITY NETWORK:

Mission: Rank, correct, track, and report on material weaknesses and high risk areas declared in EPA's Annual FMFIA Report.

Members: ODs and ARAs designated by their AAs or RAs as accountable for correcting material weaknesses. The designated Lead Region for Management ARA is a permanent AO.

Meetings: Meet 4 times annually to:

- Report on progress/barriers to correcting material weaknesses and high risk areas;
- Identify emerging vulnerabilities;
- Identify emerging, cross-media, or cross-program weaknesses;
- Share "lessons learned" and successes to solving management control problems;
- Recommend to the ARMIC material weakness and high risk candidates.

EPA Order

Classification No.
Approval Date:

ADMINISTRATOR'S RESOURCE AND MANAGEMENT INTEGRITY COUNCIL

1 PURPOSE: This Order establishes the Administrator's Resource and Management Integrity Council, *formerly known as the Senior Council on Management Controls*, as a permanent executive-level oversight and decision-making body for EPA's management integrity and resource management responsibilities. The term resource management captures the entirety of EPA's programmatic, administrative and financial responsibilities, including procurement and contracts management, grants management, and cooperative and interagency agreements. The Council strengthens accountability, discipline, and sound management in all Agency programs and activities by ensuring that Assistant and Regional Administrators anticipate, correct and prevent major management problems.

The Order also establishes the Council's key advisory groups:

- **Resource Management Committee (RMC)** is responsible for overseeing improvement of resource management, including programmatic financial management; procurement and contracts management; grants management; and cooperative and interagency agreements. The RMC replaces EPA's Standing Committee on Contracts Management and assures effective implementation of Standing Committee recommendations. This Order establishes the *Senior Resource Officials* as EPA's primary points of accountability and members of the *Resource Management Committee* charged with strengthening Agency-wide resource management practices.

- **Accountable Officials (AO) for Management Integrity Network,** is responsible for ranking, correcting, tracking, and reporting on material weaknesses and high risk areas declared by the Administrator in the Agency's annual Federal Managers' Financial Integrity Act (FMFIA) report to the President and Congress.

II AUTHORITY: This Order is issued to implement requirements of the Budget and Accounting Act of 1921 [31 U.S.C. 53], the Accounting and Auditing Act of 1950 [31 U.S.C. 67], the Federal Managers' Financial Integrity Act of 1982 [P.L. 97-255], the Inspector General Act Amendments of 1988 [P.L. 100-504], and the Chief Financial Officers Act of 1990 [P.L. 101-576]. This Order implements policy provisions of OMB Circulars A-11, Preparation and Submission of Budget Estimates, A-50, Audit Follow-up; A-123, Internal Control Systems; A-127, Financial Management Systems; and A-130, Management of Federal Information Resources.

III BACKGROUND:

Senior Council on Management Controls: In 1989, EPA's Administrator created the Senior Council on Management Controls to:

- Provide policy oversight and strategic review of EPA's management control systems under FMFIA and the Inspector General Act Amendments of 1988.

- Foster a culture of management integrity throughout EPA Headquarters and Regional Offices.

Since its inception, the Council assumed specific responsibilities for recommending material weaknesses for inclusion in the Administrator's Annual FMFIA Report. The Council also provided a forum for the EPA Inspector General (IG), the General Accounting Office (GAO), and the Office of Management and Budget (OMB) to raise issues that they believed the Administrator should declare as material or high risk in EPA's annual FMFIA report. Both OMB and GAO have endorsed the Senior Council on Management Controls. Moreover, OMB recommended that *all* Federal Agencies establish similar councils in its 1993 draft revision of OMB Circular A-123.

In her March 10, 1993, testimony before the House Subcommittee on Oversight and Investigations concerning EPA's plans to address contracts management, EPA Administrator Carol M. Browner announced her plan to "... establish a high level council of the Agency's senior managers to not only integrate management with mission, but also to integrate use of all our various resource tools." Administrator Browner indicated that her Council would " ... provide Agency-wide leadership and an all-encompassing approach to the resolution of resources management issues and dangers." In April 1993, Administrator Browner decided to expand the scope of the Senior Council on Management Controls, renaming it the *"Administrator's Resource and Management Integrity Council."*

Standing Committee on Contracts Management: In March 1992, EPA's Administrator organized the Standing Committee on Contracts Management to examine problems with contracts management in EPA and develop comprehensive recommendations for improvement. The Standing Committee issued its report in June 1992. In 1993,

Administrator Browner established the *"Resource Management Committee"* to replace and expand the focus of the Standing Committee to include management of all resources.

Accountable Officials (AO) for Management Integrity Network: In February 1992, the then Assistant Administrator for Administration and Resources Management (AA-OARM) issued the Agency's Strategy for Correcting Material Weaknesses to strengthen top management accountability by establishing the Agency's *"Accountable Officials for Management Integrity."* The AOs are senior career officials, at the Office Director-level, designated by their Assistant or Regional Administrator as the key individuals responsible for fixing the material weaknesses and high risk areas in their programs and operations.

IV MISSION:

Administrator's Resource and Management Integrity Council (ARMIC): The mission of the ARMIC is to ensure a strategic approach to management integrity, integrated use of resource management tools [including program financial management; procurement and contracts management; grants management; cooperative and interagency agreements], and a balance of mission and management responsibilities. The Council ensures discipline in fixing problems so that the Agency maintains trust of the American taxpayers in its stewardship of public monies and protection of the environment. Specifically, the Council will:

- Assure compliance with resource management laws and regulations, while furthering the Agency's mission;
- Align Agency management integrity processes with budget and planning;
- Develop a climate of early warning and prevention of major resource management and management integrity problems;
- Strengthen top management attention to and accountability for anticipating and correcting systemic weaknesses;
- Mediate impasses among program offices, the OIG, GAO, OMB, and the Congress in addressing management integrity and resource management issues; and,
- Recommend major management control weaknesses and high risk issues to the Administrator for inclusion in the Agency's reports to the President and Congress under the FMFIA, IG Act Amendments, and the CFO Act.

Resource Management Committee (RMC): The mission of the RMC is to provide an Agency-wide forum for Senior Resource Officials (SROs) to develop methodologies and

models for strengthening EPA's resource management practices and monitor effective implementation of RMC decisions. Specifically, the Committee will:

- Develop resource management strategies for reforming the Agency's resource management practices, including: program financial management; procurement and contracts management; grants management; cooperative and interagency agreements.

- Oversee, assess and advocate accountable program, administrative, and financial resource management;

- Perform periodic reviews of resource management activities, and monitor prompt resolution of weaknesses identified; and,

- Make decisions necessary to implement the Standing Committee on Contracts Management recommendations.

Accountable Officials for Management Integrity Network: The mission of the AOs is to correct material weaknesses and report on progress and barriers to the Council, through their Assistant and Regional Administrators. Specifically, the AOs:

- Ensure ongoing, consistent top management attention to progress in correcting EPA's material weaknesses and to early warning reports of emerging vulnerabilities;

- Report on progress and barriers to fixing EPA material weaknesses and OMB high risk areas in their respective offices;

- Alert the ARMIC to emerging issues and recommend strategies to prevent vulnerabilities from becoming material weaknesses; and

- Share lessons learned in fixing weaknesses.

V MEETING REQUIREMENTS AND CALENDAR:

Administrator's Resource and Management Integrity Council: The ARMIC will observe a principals only policy for attendance and meet at least three times per year, convening additional meetings, as necessary. Meeting agendas include:

- Briefings by OMB, GAO, and EPA's IG on their recommended material weakness and high risk candidates for the Agency's Annual FMFIA Report;

- Decisions on material weaknesses and high risk areas recommended to the Administrator for the Agency's Annual FMFIA Report;

- Decisions and status updates on progress in strengthening and integrating Agency-wide resource management practices, including: management controls; training; workload limitations; contract management guidelines; and, disciplinary policy; and,

- Decisions as required, to address other emerging management issues that warrant the attention of the Council.

Resource Management Committee: The frequency of meetings is to be determined by the Committee on an ongoing basis. If appropriate, RMC meetings may be held in conjunction with other senior management meetings, such as Assistant Regional Administrator meetings.

Accountable Officials for Management Integrity Network: The AOs meet at least four times annually to:

- Report on progress and barriers to correcting material weaknesses and high risk areas;

- Identify emerging vulnerabilities;

- Identify emerging, cross-media, or cross-program weaknesses;

- Share lessons learned and successful approaches to solving management control problems; and

- Develop recommendations to the ARMIC on declaring and ranking material weaknesses and high risk areas.

VI COMPOSITION:

Administrator's Resource and Management Integrity Council: The ARMIC consists of fifteen members appointed by the Administrator -- five permanent and ten rotating on one-year terms. The permanent members include: the Deputy Administrator, as chair; the Assistant Administrator for Administration and Resources Management/Chief Financial Officer (AA-OARM/CFO), as vice-chair; the AA for Policy, Planning and Evaluation (AA-OPPE); the IG; and, the General Counsel. Rotating members include: three AAs; three RAs; two SROs; and two AOs.

Resource Management Committee: The RMC is comprised of the AA-OARM/CFO, as chair; OARM's Deputy Assistant Administrator for Finance and Acquisition/Deputy Chief Financial Officer (DAA-OARM/DCFO), as vice-chair; the Deputy IG; Deputy General Counsel; and, representatives of the SROs [the 4 media DAAs, as well as 2 additional DAAs and 2 Assistant Regional Administrators (ARAs) who will rotate].

Accountable Officials for Management Integrity Network: The Accountable Officials are Office Directors and ARAs designated by their Assistant or Regional Administrator as accountable for correcting material weaknesses. The ARA of the designated lead Region for Management is a permanent member of the Accountable Officials.

VII RESPONSIBILITIES:

Administrator: Sets vision, priorities and direction for the Agency's management integrity and resource management programs. Decides on recommendations concerning resource management and management integrity issues presented by the ARMIC, including material weaknesses and high risk areas reported to the President and the Congress in EPA's Annual FMFIA Report. Appoints those AAs and RAs who serve rotating one-year terms on the Council.

Deputy Administrator: Chairs the ARMIC and ensures sustained and balanced attention to both resource management and management integrity issues consistent with the priorities and direction set by the Administrator. Ensures that the Council holds requisite annual decision meetings to meet statutory requirements. As one of the ARMIC standing members, votes on weaknesses the Council will recommend that the Administrator declare as material or high risk in EPA's Annual FMFIA Report. Meets periodically with the Agency's IG as well as OMB, GAO, and the Congress and ensures that the ARMIC addresses their respective concerns.

AA-OARM/CFO: Serves as Vice-Chair of the ARMIC and chairs both the Resource Management Committee and the Accountable Officials for Management Integrity. As one of the ARMIC standing members, votes on weaknesses the Council will recommend that the Administrator declare as material or high risk in the Agency's Annual FMFIA Report. Ensures awareness of and attention to requirements of the CFO Act in discussions of resource management and management integrity issues by the ARMIC, RMC, and AOs. While the SROs are responsible for resource management in their respective program or Regional Offices, the CFO has overall responsibility for these resources.

Deputy AA-OARM/Deputy CFO: Serves as the Vice-Chair of the RMC and the AOs, and -- in the absence of the AA-OARM/CFO -- serves as the Chair. Ensures awareness of and attention to requirements of the CFO Act in discussions of resource management and management integrity issues by the ARMIC, RMC, and AOs.

AA-OPPE: Ensures awareness of and attention to strategic planning, budget planning, program evaluation, and environmental indicators in the ARMIC's discussions and decision-making for resource management and management integrity issues. As one of the ARMIC standing members, votes on weaknesses which the ARMIC will recommend the Administrator declare as material or high risk in the Agency's Annual FMFIA Report.

Inspector General: Recommends to the ARMIC material weakness and high risk candidates for inclusion in EPA's Annual FMFIA Report to the President and Congress. As one of the ARMIC standing members, votes on weaknesses which the ARMIC will recommend the Administrator declare as material or high risk in the EPA Annual FMFIA Report. Advises the ARMIC of management control issues emerging in IG audits and special reviews that warrant Council attention and action to prevent them from escalating to material or high risk problems.

General Counsel: As the Agency's principal counselor, provides the ARMIC with the full range of legal services and advice for all EPA programs and activities. As one of the ARMIC standing members, votes on weaknesses which the ARMIC will recommend that the Administrator declare as material or high risk in the EPA Annual FMFIA Report.

Principal Deputy General Counsel: As the Designated Agency Ethics Official and standing member on the RMC, provides advice on legal and ethical conduct and decisions related to all Agency activities, including management integrity and programmatic and administrative resource management practices.

Assistant and Regional Administrators: AAs and RAs who are serving one-year terms as ARMIC members vote, during their respective terms, on weaknesses which the ARMIC will recommend to the Administrator as material or high risk for the EPA annual FMFIA report. Hold AOs accountable for aggressive action in correcting material weaknesses, providing early warning and taking prompt action to address emerging vulnerabilities.

Senior Resource Officials (SROs): One Senior Executive Service manager is designated by each Assistant, Associate, and Regional Administrator to serve as the SRO accountable for that Office's ethical, effective resource management [programmatic, administrative, and financial management.] In cases where a resource requirement may involve more than one program or Regional Office, the SROs of all affected offices share responsibility. While the SROs are accountable for resource management in their respective program or Regional Offices, the CFO still has overall responsibility for these resources.

Specifically, the SROs:

- Advise the CFO on resource management issues, including: program financial management; procurement and contracts management; grants management; and, interagency and cooperative agreements.

- Assure compliance with programmatic and administrative resource management laws and regulations while furthering program mission;

- Ensure appropriate control measures are in place for accountable programmatic, administrative, and financial resource management, including the special controls for sensitive contract activities.

- Review and approve:
  - Requests for contract advisory and assistance services;
  - Procurement requests over $1 million for Superfund or ADP requests [$250,000 for other requests]; and,
  - Federal assistance decision memoranda over $1 million for program grants and State revolving funds [over $250,000 for all others, including Superfund cooperative agreements].
- Ensure -- by working through established organizational structure -- that program or Regional resource managers [e.g., project officers; grants management officers; delivery order project officers; work assignment managers] and their supervisors:
  - Are working within their workload limitations;
  - Have Agency-required training and experience, and receive appropriate program or office-specific training available; and,
  - Have appropriate resource management responsibilities in their position descriptions and performance standards.

SRO responsibilities may not be redelegated. However, appropriate SRO functions may be assigned to one individual reporting directly to the SRO. The SRO is subject to disciplinary actions resulting from his/her own failure, as well as that of the assigned individual, to comply with the spirit and intent of resource management regulations and policy. At the direction of the Administrator, an annual responsibility acceptance process will be established to ensure that SROs, their supervisors and their delegates fully understand the responsibilities involved in the function.

On one-year terms, two SROs will serve as members of the ARMIC and two will serve on the RMC. They vote, during their respective terms, on weaknesses which the ARMIC will recommend to the Administrator as material or high risk for the EPA annual FMFIA report. SROs participating on the ARMIC may also serve on the RMC.

Accountable Officials for Management Integrity: One or more Senior Executive Service managers at the level of Office Director and Assistant Regional Administrator are designated by their Assistant or Regional Administrator as accountable for correcting that Office's material weaknesses and high risk areas declared by the Administrator in the Agency's Annual FMFIA Report to the President and Congress. AOs track and report to the ARMIC and their respective AAs and RAs on their progress in eliminating these problems. AOs elevate to the ARMIC's attention those issues that may have the potential for developing into material weaknesses or high risk areas, especially cross-cutting issues that exist in more than one EPA Office.

Specifically, the AOs:

- Apprise their AA or RA on progress in fixing material weaknesses and high risk areas in their Office:
- Advise their AA or RA on Office-wide compliance with management integrity regulations; and,
- Provide early warning reports and recommendations to their AA or RA on emerging vulnerabilities.

On one-year terms, two AOs will serve as members of the ARMIC. They vote, during their respective terms, on weaknesses which the ARMIC will recommend to the Administrator as material or high risk for the EPA annual FMFIA report.

VIII DEFINITIONS

Annual FMFIA Report: Report from agency heads to the President and the Congress required by December 31 of each year on agency compliance with management control standards prescribed by the Federal Managers' Financial Integrity Act of 1982.

Chief Financial Officers Act of 1990: Statute designed to: 1) bring more effective general and financial management practices to the Federal Government; 2) provide for improvement of systems of accounting, financial management and internal controls to assure the issuance of reliable financial information and to deter fraud, waste and abuse of government resources; and, 3) provide for the production of complete, reliable, timely and consistent financial information for use by the Executive Branch and the Congress in the financing, management and evaluation of Federal programs.

Federal Managers' Financial Integrity Act of 1982: Statute designed to: 1) protect government resources from waste, fraud, and mismanagement; 2) require systematic self-examination of management controls; 3) direct agency heads to report annually to the President and the Congress on agency compliance with management control standards; and, 4) require agency Inspectors General to certify reasonable assurance of agency control systems.

General Accounting Standards of 1983: Standards defined by the Comptroller General as the minimum level of quality acceptable for agency control systems and constitute the criteria against which agency systems are evaluated, as required by the Federal Manager's Financial Integrity Act of 1982.

High Risk Area: Management control weaknesses the OMB considers the most egregious in the Federal Government. OMB defines high risk areas as *material weaknesses, combinations of material weaknesses, or issues sufficiently serious to require ongoing*

oversight by the Administrator, the President, and Congress. These weaknesses may be disclosed in FMFIA reports, IG and GAO reports, Congressional hearings, media accounts and other sources.

Inspector General Act Amendments of 1988: Statute designed to establish a semiannual reporting system to the Congress for all Federal agencies and Inspectors General on audit management and follow-up practices, including implementation of corrective actions.

Management Controls: Safeguards that provide reasonable assurance of: *1) compliance with laws and regulations; 2) protection of funds, property, and assets from waste, fraud, abuse and mismanagement; and 3) properly recorded revenues and expenditures.*

Management Integrity: Implementation of *FMFIA and effective management controls; audit management; quality and continuous improvement; and prevention-based quality assurance* throughout EPA.

Material Weakness: A weakness in management controls of such severity that it warrants the ongoing attention of the Administrator, the President, and Congress. Specific criteria EPA uses for determining the materiality of a weakness are included in Attachment 1 of this Order.

Resource Management: Planning, direction and control of the entirety of Agency programmatic, administrative, and financial resource functions, including: procurement and contracts management; grants management; and, cooperative and interagency agreements.

IX EFFECTIVE DATE

This Order is effective immediately upon the Administrator's signature. Any provisions in previous charters, Orders, manuals, or other EPA directives that may be inconsistent with this Order are hereby superseded.

_____ _____

Carol M. Browner, Administrator Date

Attachment 1

EPA'S MATERIAL WEAKNESS CRITERIA

Federal Managers' Financial Integrity Act (FMFIA) Reporting

Under FMFIA, all Federal managers are responsible for ensuring that effective management control systems are in place to safeguard all of their processes and operations -- whether administrative, financial or programmatic. Managers are also required to evaluate the effectiveness of their controls on a regular basis, and to identify weaknesses which must be eliminated. It is EPA policy that ***managers must declare as "material" in their Annual FMFIA Reports those weaknesses in their management control systems*** *which meet any of the following criteria:*

1.	Significantly impair the fulfillment of the Agency or component's mission.
2.	Deprive the public of needed services.
3.	Violate statutory or regulatory requirements.
4.	Significantly weaken safeguards against waste, loss, unauthorized use of misappropriation of funds, property or other assets.
5.	Result in a conflict of interest.
6.	Merit the attention of the Administrator, the Administrator's Resource and Management Integrity Council, the President, or Congressional oversight committees.
7.	Exist in a major program or activity.
8.	Could result in the loss of $10 million or more, or 5% or more of the resources of a budget line item.
9.	Omission from the report could reflect adversely on the management integrity of the Agency.
10.	Either exist at the present time or are emerging as weaknesses which may impede carrying on a major program activities.

UNITED STATES OF AMERICA
BEFORE THE ENVIRONMENTAL PROTECTION AGENCY

In the matter of:	EPA Case Nos.:
AScI Corporation and Rizwanul Haque,	91-0031-00
	91-0031-01
Respondents	

COMPLIANCE AGREEMENT

RECITAL

A. On September 29, 1992, the Director, Grants Administration Division, U.S. Environmental Protection Agency (EPA), issued a Notice of Proposed Debarment to AScI Corporation and Rizwanul Haque, President and sole shareholder of AScI.

B. The Action Referral Memorandum (ARM) attached and incorporated into the Notice alleges that:

i. In 1985, Respondent Haque violated the provisions of 18 U.S.C. §205, in applying on behalf of Respondent AScI, to the Small Business Administration (SBA) for certification under SBA's 8(a) program while Haque was a Government employee; and

ii. In 1985, Respondent Haque violated the provisions of 18 U.S.C. §205 in requesting SBA to send search letters on behalf of Respondent AScI to the Environmental Research Laboratory-Duluth (ERLD) while Haque was a Government employee; and

iii. The Respondents exhibited a pattern of behavior in dealing with the contracting activity at ERLD which could give the appearance of impropriety, demonstrating a lack of sound business judgment and integrity.

C. On August 16, 1992, AScI adopted the corporate Code of Business Conduct attached hereto at Attachment 1.

D. On June 12, 1992, AScI adopted the corporate Conflict of Interest Plan attached hereto at Attachment 2.

E. AScI has provided the Advocacy Branch of EPA with copies of certain business records in order that EPA's debarment/suspension counsel might conclude the investigation of AScI's contracting activity at ERLD.

F. Respondent Haque met with the Debarring Official and convinced the Official that he and his corporation understand and are sincerely committed to resolving the concerns raised in the ARM. However, by entering into this Compliance Agreement, Respondents do not acknowledge any violation of law or regulation but confirm their commitment to avoiding even the appearance of impropriety.

G. Pursuant to the provisions of 48 C.F.R. §9.406-1(a)(1) through (10), EPA should consider mitigating factors and remedial measures such as those described herein.

H. The Parties have agreed to a process and conditions to satisfy the concerns of EPA while allowing the Respondents to participate in Federal procurement and non-procurement activities.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

I. The Debarring Official will withdraw the Notice of Proposed Debarment dated September 29, 1992.

II. The Respondents will abide by the Terms and Conditions recited hereinafter for a period of five years from the date of this Agreement except for condition 1, the term of which is three years from the date of this Agreement.

III. After one year, EPA will audit the Respondents' compliance with the terms of this Agreement. AScI agrees to reimburse the U.S. Treasury for the reasonable cost of this audit (hereinafter the "one year anniversary audit"), not to exceed $5,000.00. EPA agrees that the cost of any audit shall not exceed the actual salary of the Goverment employees performing the audit and the normal per diem rate applicable to EPA travel, lodging, meals and expenses.

IV. If the one year anniversary audit is satisfactory to EPA, EPA agrees that EPA will not thereafter seek to suspend or debar the Respondents based on the conduct alleged in the aforementioned Notice of Proposed Debarment.

V. If, however, the results of the one year anniversary audit are not satisfactory to EPA or EPA receives, within the one year period, other information indicating Respondents' lack present

responsibility, EPA may, at its sole discretion, seek to debar the Respondents as proposed in the September 29, 1992 Notice of Proposed Debarment as supplemented by any additional evidence that EPA obtains.

VI. The Respondents will reimburse the U.S. Treasury five thousand dollars ($5,000) for a portion of the costs of the investigation of AScI's Duluth contracting activity.

VII. The Respondents agree to release and hold harmless the United States, its instrumentalities, agents, and employees, in their official and personal capacities, of any and all liability or claims arising out of matters contained herein.

VIII. In accordance with its terms, this Agreement resolves the debarment matters arising out of the Respondents' contracting activity at ERLD as specified in the Notice of Proposed Debarment. EPA retains rights and remedies other than debarment/suspension including actions under the Contract Disputes Act. EPA also retains the right to initiate additional process if circumstances reveal additional grounds for suspension or debarment.

TERMS AND CONDITIONS

1. Respondents will not bid on or enter into any contracts (on-site or off-site) at the EPA facility in Duluth, Minnesota nor participate in any non-competitive procurement at the EPA facility at Grosse Ile, Michigan for a period of three years after the date of this Agreement. Nothing in this provision precludes EPA from exercising the remaining option in the current contract between EPA and AScI for on-site services at Grosse Ile, Michigan, nor does EPA represent that EPA will exercise the Gross Ile option.

2. Respondents will notify the Advocacy Branch, Debarment and Suspension Division, whenever AScI hires a former Federal government employee within one year of his/her termination of Government service with an agency with which AScI has a prime contract or to which AScI is a subcontractor on a Small Business Administration 8(a) contract. Respondents will notify the Advocacy Branch, Debarment and Suspension Division, whenever AScI hires a close relative (parent, grandparent, spouse, sibling, offspring, niece, nephew, or person living in the same household) of a Federal government employee of an agency with which AScI has a prime contract or to which AScI is a subcontractor on a Small Business Administration 8(a) contract. The notification will include the name, address, and a position description of the proposed AScI employee and the name, agency, relationship,

business address and business telephone number of the Federal government employee/relative.

3. AScI will continue and keep in force its corporate Code of Business Conduct (Attachment 1) as modified by the terms of paragraph 5 of this Agreement.

4. AScI will continue and keep in force its corporate Conflict of Interest Plan (Attachment 2).

5. AScI will modify its corporate Code of Business Conduct (Attachment 1) so that paragraph IV(A)(3) reads as follows:

(3) **Inspector General's Office**

The Inspector General Act of 1978, as amended, 5 U.S.C. App., establishes Offices of Inspector General in many executive agencies. The Inspectors General are authorized to conduct investigations and audits for the purpose of preventing and detecting fraud, waste and abuse with respect to their agency's programs and operations. Employees may report unethical practices anonymously to the Inspector General's fraud hot line. The Company encourages employees to report evidence of fraud, waste and abuse to the appropriate Inspector General.

6. AScI will ensure that all employees receive annual training on the provisions of AScI's Code of Business Conduct and Conflict of Interest Plan.

7. In the event that AScI is ever indicted, convicted or otherwise charged with any of the offenses set forth at 48 C.F.R. §9.406-2(a)(1) through (4) or 40 C.F.R. §32.305(a)(1) through (4), whether civilly or criminally, by any public or private party, AScI agrees to notify the Chief, Advocacy Branch, within ten (10) calendar days.

8. EPA may, at its discretion, and upon five (5) days notice to AScI, conduct periodic audits of AScI's compliance with the terms of this Agreement. AScI shall make all its business records and personnel available to EPA at its principal place of business for the purposes of determining compliance with this Agreement, Federal law, and Federal regulations.

9. In the event EPA determines that additional audits of this Agreement are necessary after the one year anniversary audit, AScI agrees to reimburse the U.S. Treasury for the reasonable cost of the audits, not to exceed $5,000.00 per audit. EPA agrees that the cost of any audit shall not exceed the actual salary of the Goverment employees performing the audit and the normal per diem rate applicable to EPA travel, lodging, meals and expenses. The Parties agree that if EPA conducts more than one

compliance audit in any twelve month period, AScI will reimburse the U.S. Treasury for only one audit per twelve month period.

10. EPA may, upon adequate evidence that AScI breached a material term of this Agreement, immediately suspend AScI after which AScI will have ten (10) calendar days to show cause why a period of debarment should not be imposed. Any material breach of this Agreement shall be regarded as an independent cause for suspension or debarment, in addition to a cause of action under this Agreement.

11. The terms, conditions and obligations of this Agreement shall survive dissolution of AScI or reorganization of its corporate structure in any manner and shall be fully binding upon any organization which is a successor to or associated or affiliated with AScI.

12. This Agreement shall become effective only upon its acceptance by the Director, Office of Grants and Debarment, pursuant to 40 C.F.R. Part 32 and the 48 C.F.R. Subpart 9.4, as evidenced by his dated endorsement affixed hereto.

Mary Willis Clarke
Mary Willis Clarke, Esq.
District Debarment Counsel
Advocacy Branch
for the U.S. ENVIRONMENTAL
PROTECTION AGENCY

12-29-92
Date

Rizwanul Haque

12/18/92
Date

ASci Corporation
By: Rizwanul Haque, President

12/18/92
Date

ENDORSEMENT

Having reviewed the terms of this Compliance Agreement, I hereby approve the terms of said agreement as the appropriate disposition of this matter.

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY

HARVEY PIPPEN, JR., Director
Office of Grants and Debarment

12/30/92
Date

ORD OFFICES, LABORATORIES, AND FIELD SITES

ABBREVIATION	NAME
IOAA	***Immediate Office of the Assistant Administrator for Research and Development***
SORDO RTP	Office of the Senior ORD Official, Research Triangle Park, NC
SORDO CINC	Office of the Senior ORD Official, Cincinnati, OH
ORPM	***Office of Research Program Management***
OER	***Office of Exploratory Research***
OTTRS	***Office of Technology Transfer and Regulatory Support***
CERI CINC	Center for Environmental Research Information, Cincinnati, OH
OMMSQA	***Office of Modeling, Monitoring Systems and Quality Assurance***
EMSL LV	Environmental Monitoring Systems Laboratory, Las Vegas, NV
WARRENTON	Field Site: Environmental Photographic Interpretation Center, Warrenton, VA
EMSL CINC	Environmental Monitoring Systems Laboratory, Cincinnati, OH
AREAL RTP	Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, NC
OEETD	***Office of Environmental Engineering and Technology Demonstration***
AEERL RTP	Air and Energy Engineering Research Laboratory, Research Triangle Park, NC
RREL CINC	Risk Reduction Engineering Laboratory, Cincinnati, OH
EDISON	Field Site: Releases Control Branch, Edison, NJ
OEPER	***Office of Environmental Processes and Effects Research***
ERL ADA	Environmental Research Laboratory, Ada, OK
ERL ATHENS	Environmental Research Laboratory, Athens, GA
ERL CORVALLIS	Environmental Research Laboratory, Corvallis, OR
ERL DULUTH	Environmental Research Laboratory, Duluth, MN
MONTICELLO	Field Site: Ecological Research Station, Monticello, MN
GROSSE ILE	Field Site: Large Lakes Research Station, Grosse Ile, MI
ERL GULF BREEZE	Environmental Research Laboratory, Gulf Breeze, FL
ERL NARRAGANSETT	Environmental Research Laboratory, Narragansett, RI
NEWPORT	Field Site: Pacific Ecosystems Branch, Newport, OR
OHR	***Office of Health Research***
HERL RTP	Health Effects Research Laboratory, Research Triangle Park, NC
OHEA	***Office of Health and Environmental Assessment***
ECAO CINC	Environmental Criteria and Assessment Office, Cincinnati, OH
ECAO RTP	Environmental Criteria and Assessment Office, ResearchTriangle Park, NC
EAG	Exposure Assessment Group, Washington, D. C.
HHAG	Human Health Assessment Group, Washington, D. C.

ORD Organization

EPA's research and development mission is carried out by the Office of Research and Development under the direction of an Assistant Administrator. The ORD organizational structure divides the overall research and development agenda into offices that have responsibilities for major research functions. Those major functions are Monitoring and Quality Assurance, Environmental Engineering, Environmental Processes, Health Research, Health and Environmental Assessment, Technology Transfer, Funding of Exploratory Research, and the Management and Administration of the overall program.

Of the 9 ORD offices, 5 are program offices which manage the 16 laboratories and 5 field offices where EPA carries out much of its environmental research and development.

A list of ORD's offices, laboratories and field sites, and a map of their locations, are included in this report as Figure 1.

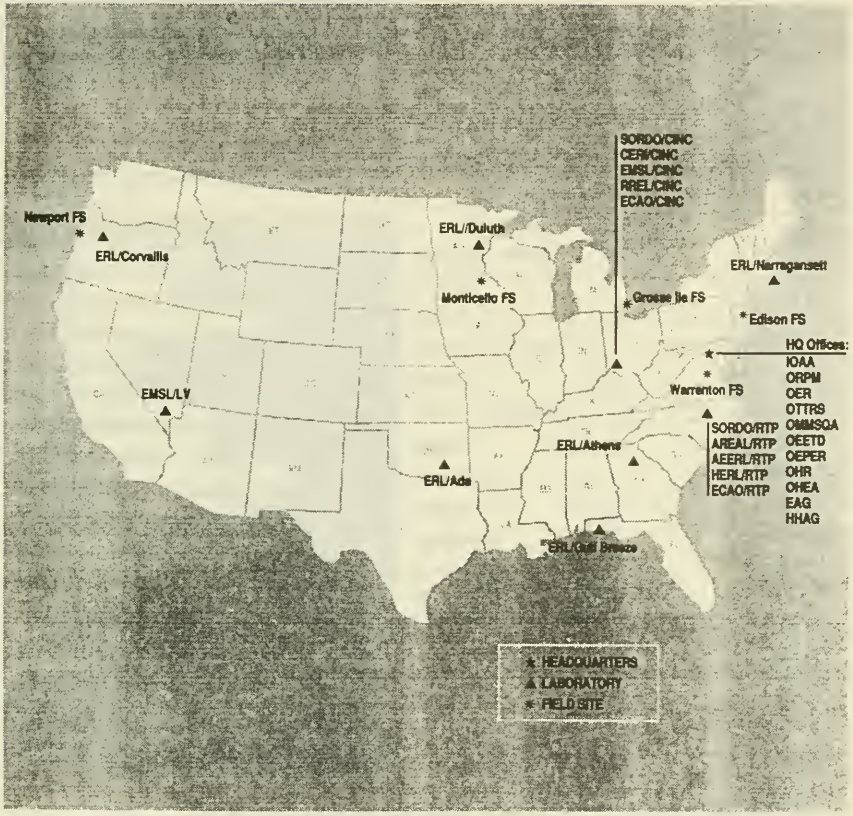


Figure 1. Office of Research and Development facility locations.

Although the overall workforce is 51 percent intramural and 49 percent extramural, some variations are present among the many EPA operating units. Table 4 shows the proportion of intramural to extramural resources in each ORD laboratory. Figure 3 deals with Headquarters Offices and Figure 4 displays information by office.

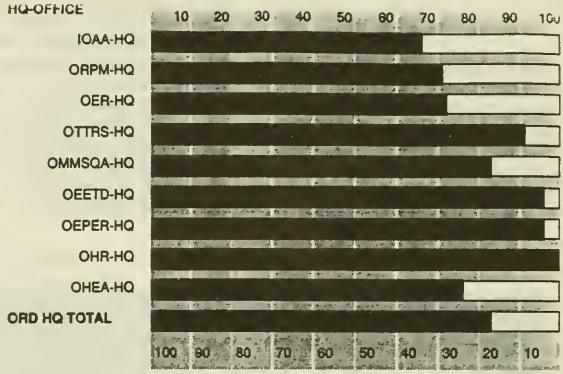


Figure 3. Workforce composition (Headquarters Offices).

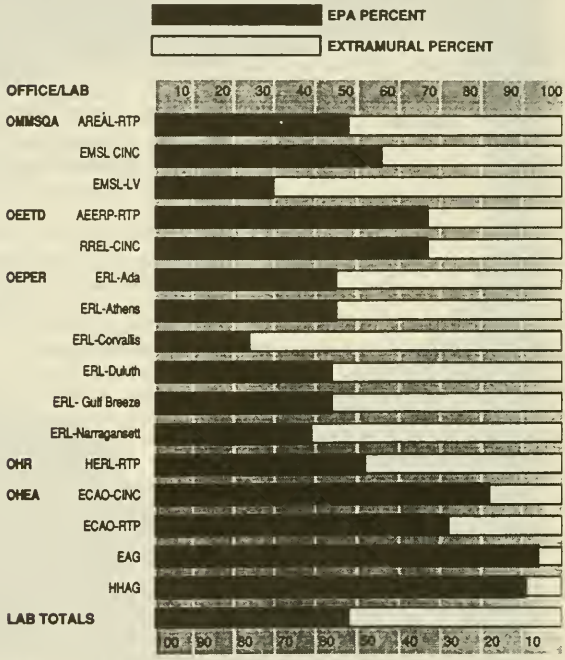
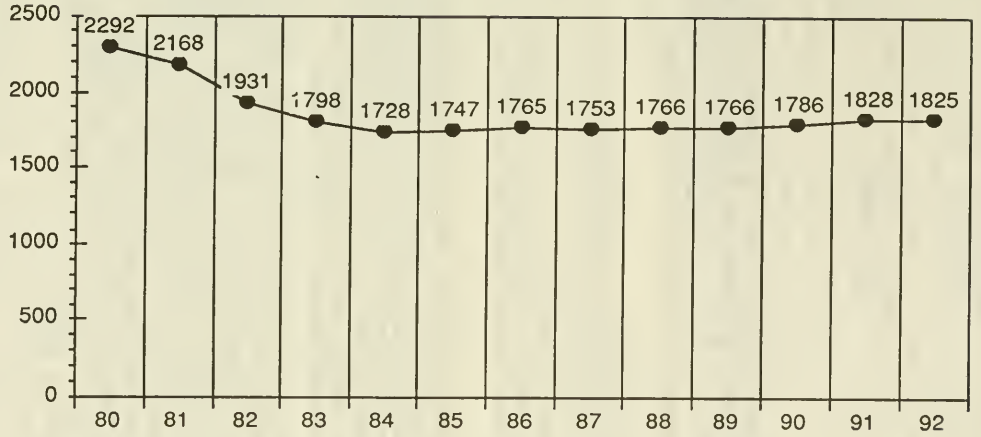


Figure 4. Workforce composition (Laboratories).

Office of Research and Development FTE
Actuals from FY 1980 through FY 1992



- Extramural dollars have increased from $233 million to $324 million over the same time period.
- Reimbursable FTE are not included.
- FY 1993 actuals are not available. However, a lapse of approximately 60 FTE is anticipated from the authorized level of 1867 (without reimbursables).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL -7 1993

OFFICE OF
RESEARCH AND DEVELOPMENT

SUBJECT: Office of Research and Development (ORD) Response to the Office of Inspector General (OIG) Final Audit Report No. E6ABF2-11-0032-3100153, March 31, 1993, Use of Cooperative Research and Development Agreements (CRADAs) by EMSL-Cincinnati

FROM: Gary J. Foley
Acting Assistant Administrator
for Research and Development (RD-672)

TO: Kenneth A. Konz
Assistant Inspector General for Audit
Office of Inspector General (A-109)

This is the ORD's response to the above Final Audit Report No. E6ABF2-11-0032-3100153. The Report dated March 31, 1993, contained one recommendation: that the Acting Assistant Administrator for ORD instruct the Director of the Environmental Monitoring Systems Laboratory - Cincinnati (EMSL-Cincinnati) take immediate action to cancel the five CRADAs and to recover inventories made available to the CRADA firms.

ORD's response to the draft audit report made a number of alternate recommendations which we believe addressed the OIG's major concerns. In the final audit report, the OIG responded to ORD's alternate recommendations by stating "[I]n summary, we believe that the actions proposed by ORD are necessary to determine whether CRADAs are the best way to continue the reference material program." They further state, "[I]n any case, when these analyses are completed, EMSL-CIN should be in a position to determine what materials are available, what materials are not available and need to be produced, and how they should be produced -- through the marketplace, in-house, through contracts, or through CRADAs."

In the final report, OIG affirmed the original recommendation from the draft report, believing that the five CRADAs are inappropriate. ORD acknowledges OIG's concerns about the intent of FTTA and its applicability to the reference material program. Further, ORD recognizes that a detailed analysis of the reference material market should have been conducted at the outset to determine the impact the CRADAs would

have on competition in the marketplace. As described in number 6., below, the Agency plans to undertake this detailed analysis, particularly to determine EPA's role in the market. Until that analysis is completed and the Agency is assured that adequate supplies of high quality reference materials are available, ORD thinks that canceling the CRADAs would be premature.

ORD feels that it has operated within the established Agency policies and procedures on the CRADAs. To determine whether the CRADAs are the best way to continue to assure that high quality reference materials are available, ORD proposes to undertake the following actions and studies. These actions were proposed in the ORD response to the draft audit report; the current status of these actions is also summarized:

1. Technical and Management Oversight of the CRADAs (OIG Final Report, page 13)

   EMSL-Cincinnati has improved its technical and managerial oversight of the CRADA program by more thorough reviews of the quarterly sales reports of CRADA products and by expanding the annual on-site audit of each CRADA to include a management review of procedures and a physical count of the inventories to confirm sales of CRADA products.

   An audit completed with Ultra Scientific on April 12-13, 1993, was successful in resolving distribution problems. For example, when the audit team inventoried all the neat pesticide standards, they also made visual estimates of the amount of the standard in each container. The estimated amount from the visual inspection of two chemicals, chlorpyrifos and trifluralin, when compared to the computer inventory did not agree. The computer inventory was found to be in error, thus explaining why recent requestors for these compounds were told that the compounds were unavailable. In the future, the physical estimates will be cross-checked against the computer values. Periodically, a comparison of the visually estimated volumes to the computer volumes will be performed to correct any errors or inconsistencies. Ultra Scientific assures us that, in the future, the physical inventory will be checked before telling a requestor that the material is unavailable or depleted. Also, the inventory was examined for homogeneity and then was cross-checked with the catalogue listings for availability and certification status. All standards were in agreement with the exception of one pesticide which had separated into two phases; this pesticide was withdrawn from distribution.

   On-site audits of the other four CRADAs are scheduled to begin as follows:

Supelco	July 21, 1993
NSI	August 2, 1993
SPEX Industries	August 16, 1993
R.T. Corp.	September 15, 1993

Based on results of these audits and reviews, we will continue to revise and improve management oversight of CRADAs. Reports of each audit will be completed within 30 days of the audit and will be available for review.

2. Inventory Status (OIG Final Report, page 13)

By August 15, 1993, EMSL-Cincinnati will prepare a report which tabulates the EPA inventories that were available to the CRADA firms at the time of the signing of the CRADAs; the number of samples sold; the estimated number of samples per series needed till replacement; and, the number of EPA inventory ampuls/type that are not needed and can be disposed of by EPA.

3. Discontinuance of Use of EPA pre-CRADA Sample Inventory (OIG Final Report, page 17)

EMSL-Cincinnati began negotiations with the five CRADA firms in April 1993 to determine dates for discontinuance of sale of EPA pre-CRADA inventory samples. In face-to-face meetings with four CRADA firms and one CRADA firm by teleconference, these dates, which differ among the CRADAs, have been established. Negotiations are being completed and a discontinuance schedule for existing EPA samples for the CRADAs follows.

Ultra Scientific	December 31, 1993
Supelco	January 31, 1994
SPEX	September 30, 1993
R.T. Corp.	January 31, 1994

NSI is a special situation because initially its CRADA product distribution was based solely on the EPA inventory of hundreds of different chemicals. Negotiations are in process with NSI; a discontinuance date for distributing EPA pre-CRADA inventory samples will be established by September 1, 1993.

4. EPA Logo Use (OIG Final Report, page 10)

EMSL-Cincinnati has informed the five CRADA firms and their retailers in a letter dated May 6, 1993, signed by the Laboratory Director, that the EPA logo, symbol and flower should not be used in CRADA labels, certificates of analyses, catalogues, advertising, etc. Dates of agreement by the CRADA firms to discontinue use follow:

Ultra Scientific	August 1, 1993
Supelco	August 1, 1993
R.T. Corp.	August 1, 1993

The SPEX date is September 1, 1993, for all printed matter except one new, full product catalogue which will be replaced in May 1994. NSI has stopped use in all printed matter except the existing presence on ampul labels. ORD and NSI are presently working on a reasonable solution for logo use on the existing ampuls' labels.

5. Appearance of Conflict of Interest (OIG Final Report, page 15)

The report noted a concern regarding a possible appearance of improper mixing of contract activities and CRADA activities by NSI. This concern dealt with ManTech (as contractor) performing stability analyses on the EPA inventory sold by NSI and ManTech as a CRADA firm. The Inspector General's comment was accepted and the following appropriate actions were taken. ManTech's analyses of the USEPA inventory ceased as of March 31, 1993. These analyses are now being performed by Bionetics, Inc., as of April 2, 1993.

6. Market Survey (OIG Final Report, pages 19 - 24)

EMSL-Cincinnati will begin a study in July 1993 to survey both the user community and reference material suppliers, to determine the number of products available in the marketplace by category (EPA Certified, A2LA Certified, others), to determine comparative costs and USEPA's market share, and to chemically analyze representative CRADA and non-CRADA products in order to compare the quality of USEPA Certified materials, A2LA Certified materials, and non-certified products. A separate report will be produced by the end of FY94 which will evaluate the CRADA operations and processes. The results of these two studies will be used by EPA to determine if the CRADA process is the best means to maintain public confidence and ensure that high quality reference materials are available to the monitoring community.

The EMSL-Cincinnati Director's staff has begun planning the most appropriate way to conduct the survey. In order to ensure no bias or appearance of conflict of interest, ORD will arrange for an objective, independent survey without direct ORD involvement. Tentative plans include the following measures: (i) the Survey Team will include EPA representatives not associated with the QA materials process and with senior officials from other Agencies and National Science Boards; (ii) the services of an impartial audit firm

will be used to recommend options for design of the survey instrument and will support the Survey Team in its conduct of the survey; (iii) clearance will be secured from the Office of Management and Budget before the survey in conducted; (iv) the impartial Survey Team will evaluate survey results according to the parameters established above and will provide a written recommendation to EMSL-Cincinnati and to ORD senior officials. ORD will make a final policy and implementation decisions relative to protecting the public's interest in matters of both the quality of reference material and marketplace stability. The decisions will determine whether to continue all CRADAs under the present arrangement (as modified by measure described earlier in this memorandum), revise the CRADA agreements, eliminate some or all CRADA agreements, expand the CRADA program, or take other actions that may be shown to be appropriate based on the survey results.

A number of these activities have already begun and some have been completed. This report indicates what actions will be taken and in what time frame these actions will be completed. When they are all completed, ORD will be in a better position to reassess the CRADA process and determine the best way to continue the reference material program.

cc: M. Bills (RD-680)
J. Puzak (RD-680)
H. Pippin (PM-216F)
C. Mahan (RD-674)
T. Hadd (RD-674)
P. Preuss (H8105)
M. Moore (H8105)
T. Gorman (LE-132K)
T. Clark (EMSL-CIN)
L. Fradkin (EMSL-CIN)
J. Winter (EMSL-CIN)
R. Wesselman (EMSL-CIN)

J. DENNIS HASTERT
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COMMITTEE ON
ENERGY AND COMMERCE

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OPERATIONS

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COMMITTEES

SELECT COMMITTEE ON
HUNGER

Congress of the United States
House of Representatives
Washington, DC 20515-1314

July 21, 1993

John C. Martin
Inspector General
U. S. Environmental Protection Agency
410 M Street, S.W.
Washington, DC 20460

Dear Inspector General Martin:

Pursuant to a request by Congressman Mica of the Environment, Energy and Natural Resources Subcommittee to ask you additional questions subsequent to adjournment of our hearing on Friday, June 25, 1993, attached is a list of such questions. Please respond to the enclosed questions by Thursday, August 5, 1993. Your written responses should be submitted to my minority counsel, Charli Coon, who will then distribute copies to the appropriate parties as well as to the committee clerk to be included in the official hearing record. Charli's address is B-350A, Rayburn House Office Building.

If you have any questions regarding this request, please contact Charli at 202/225-2738.

Thank you for your prompt attention to this matter.

Sincerely,

Dennis

J. Dennis Hastert
Ranking Minority Member
Subcommittee on Environment,
Energy & Natural Resources

Attachment

cc: Hon. Mike Synar
Chairman

PRINTED ON RECYCLED PAPER

Questions for Inspector General

1. In support of your position that the EMSL-Cincinnati CRADAs are controversial, you note that the CRADAs were challenged in a lawsuit. However, you failed to mention that the lawsuit was dismissed by the United States District Court for the Eastern District of Pennsylvania on January 12, 1993. Why did you omit this pertinent fact in the Audit Report?

2. In the Executive Summary of the Report, you state that the Report is not intended to imply that the Cincinnati CRADAs are illegal or were the result of illegal action. Additionally, you state that the intent of the Federal Technology Transfer Act (FTTA) is open for discussion. In view of the Report's admission that the recommendations are not based on the law or the intent of the law, isn't it fair to say that the Report's recommendations are based on your policy judgement?

3. One reason that the Report gives for recommending cancellation of the EMSL-Cincinnati CRADAs is that the CRADAs create a potential government-controlled monopoly.

a) What is a potential government-controlled monopoly?

b) Did your office perform any market share or economic analysis to support its monopolization claim?

c) How much of a market must the government control to constitute a potential government-controlled monopoly?

4. As evidence that the Cincinnati CRADAs create a potential monopoly, the Report cites price increases for certain QA materials. However, the Report fails to note whether the reported price increases are for the market as a whole or merely for CRADA companies.

a) Did you do any research to determine whether price increases also were made by non-CRADA companies? What were the results of your research and what conclusions did you draw?

b) According to the Report, you were unable to obtain a reasonable explanation for the price increases. Who did you ask and what explanations did you receive? Why did you consider the aforementioned explanations unreasonable?

c) Is it possible that the alleged price increases could be attributable to causes other than "monopolization"?

5. The Report concludes that the CRADAs are an inappropriate use of the FTTA because no new technology has been transferred to the private sector. Additionally, the Report faults the CRADAs for failing to result in patent applications. What section(s) of the

FTTA are you relying upon to support your contention that CRADAs are required to result in "new" and "patentable" technologies?

6. Doesn't your recommendation to cancel the Cincinnati lab's CRADAs for nonstatutory reasons such as a lack of newness or an absence of patents run directly counter to the Administration's directive to remove obstacles to CRADAs as outlined in the President's new initiative entitled "Technology for America's Economic Growth, a New Direction to Build Economic Strength" which was presented in a White House report dated February 22, 1993.

7. In the Report, you refer to a "thriving market" that existed prior to the CRADAs and that it was "crippled by the CRADAs".

a) Since EPA gave away chemical standards in large quantities instead of selling them as it now does, shouldn't the fact that EPA now sells rather than gives away standards actually help competitors in this market?

b) Who were the participants in the "thriving market" for standards certified by an independent body?

c) Are these participants still in the market?

d) Are they selling fewer standards today than before the CRADA's were initiated? If so, did you investigate whether the CRADA cooperators are also selling fewer standards today than were distributed under EPA's prior programs reflecting a general downturn in the market?

8. If a primary purpose of the FTTA is to strengthen U.S. competitiveness in the world marketplace, as the Report states on page 27, how can this be accomplished if federal agencies are not allowed to enter CRADAs directed to technologies that the CRADA company will use to compete in the marketplace?

9. You contend that the Cincinnati lab entered into the royalty agreements "with the intention of increasing its income." Don't the royalty payments reduce the costs of the CRADA program to the taxpayers?

10. Please describe the kinds of evidence that you examined to determine that no research and development (R&D) is being performed? Would your view change if you knew that standards or QC samples were being developed using research and development?

11. How many companies made hotline complaints to your office about the CRADAs? Who are they?

12. Did any of the companies that made complaints to your office submit proposals for one or more CRADAs?

13. Were the findings of the draft report discussed with non-

CRADA firms before the report was issued? a) If yes, please provide details concerning the substance of these discussions and identify the firms with whom such discussions took place.

b) Was the draft report itself provided to anyone outside EPA? If yes, who?

c) Were the CRADA firms given the opportunity to review and comment on the draft report? If so, which firms? If not, why not?

14. Does your office have any evidence that EPA has, in fact, discriminated against firms that use non-CRADA samples?

15. Are there other agencies within the government, state or federal, that certify either systems or products?

16. In the Report you claim that a person with "a bachelors degree in chemistry and some minimal experience" could produce the CRADA samples. In fact, haven't the CRADAs involved the development of quality assurance samples as well as the remanufacture and certification of old samples? Isn't the laboratory justified in seeking to ensure that this work is done by the most qualified people it can find?

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ONE HUNDRED THIRD CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON GOVERNMENT OPERATIONS
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WASHINGTON, DC 20515-6143

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BERNARD SANDERS VERMONT
INDEPENDENT

MAJORITY—(202) 225-5051
MINORITY—(202) 225-5074

July 1, 1993

The Honorable Carol Browner
Administrator
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Administrator Browner:

As you know, the Subcommittee on Environment, Energy, and Natural Resources has had a longstanding oversight interest in the Environmental Protection Agency's (EPA) radiation protection efforts. In this regard, in June 1991 I wrote to Administrator Reilly opposing a proposed reorganization of the EPA's Office of Radiation Programs (ORP). Although I agreed with EPA personnel that the functioning and effectiveness of ORP was seriously deficient, I disagreed with the proposed remedy which I viewed as effectively dismantling EPA's radiation programs. The proposal was subsequently dropped and ORP was reorganized as the Office of Radiation and Indoor Air (ORIA).

In the same 1991 timeframe, I requested that the U.S. General Accounting (GAO) conduct a review of the original reorganization proposal. Although this proposal was not implemented, I directed GAO to continue its examination of the activities of ORP because it was apparent that the Agency was experiencing great difficulty in carrying out its radiation protection missions. In particular, EPA had repeatedly failed to promulgate radiation protection regulations in a timely manner.

Enclosed is the GAO report examining the reasons for EPA's failure to promulgate several of its radiation protection regulations ("Radioactive Waste: EPA Standards Delayed by Low Priority and Coordination Problems")(GAO/RCED-93-126). GAO found that radiation protection was assigned a low institutional priority within the Agency. GAO also found that the staffing and budget resources for radiation activities had been significantly

reduced. For example, the Office of Radiation and Indoor Air has 40% fewer full-time-equivalent employees (FTE's) than it had 15 years ago.

Unfortunately, this problem persists. As I noted in my April 26, 1993 letter to you, no funds were included in the Administration's FY'94 budget request to support the Agency's responsibilities under the Waste Isolation Pilot Plant Land Withdrawal Act or for development of decommissioning standards.

In addition, GAO reported that EPA's radiation protection regulations have been repeatedly blocked in the interagency review process, primarily by the Office of Management and Budget (OMB). GAO also found that the current interagency committee for coordinating radiation policy -- the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) -- is ineffectual at resolving disputes, at best, and may be biased against EPA, at worst.

Again, as you know from communications from the Nuclear Regulatory Commission, this situation continues. For example, NRC and OMB continue to object to the Agency's promulgation of standards for disposal of low-level radioactive waste, uranium mill tailings groundwater contamination and implementation of the standards pursuant to the Clean Air Act. Although GAO did not address the Clean Air Act regulations, Congressmen Phil Sharp, Henry Waxman, and I wrote to you expressing our serious concerns about EPA's proposed actions under the Clean Air Act.

GAO also reported that support of ORIA's radiation standards development is not a high priority within ORIA's two radiation laboratories. In preparation for the Subcommittee's hearing on June 25, 1993 on the Office of Research and Development (ORD) laboratories, the Subcommittee has also found that ORD provides essentially no support for ORIA's standard setting activities.

I regret that I was unable to preside over the June 25, 1993 hearing. Needless to say, the Subcommittee will continue to closely monitor actions the Agency is taking to correct the abuses that have occurred at EPA laboratories. I am also extremely concerned about the lack of support and coordination between ORD and ORIA radiation efforts. In this regard, please provide answers to the questions contained in the Attachment to this letter no later than July 16, 1993.

The Federal government is spending billions of dollars annually on development of geologic repositories for transuranic and high-level waste, uranium mill tailings remedial action and environmental clean-up activities at U.S. Department of Energy sites and it is critical that EPA radiation protection standards be promulgated in a timely manner. It is essential that EPA restore its capability to carry out this responsibility. It is also essential that the interagency review and coordination process for promulgation of these regulations be revised.

I recognize that some of these issues will require the attention of OMB and I am writing separately to Director Panetta on this subject. Nonetheless, it is incumbent upon you, as Administrator of EPA, to correct these problems; I look forward to working with you in this effort.

Sincerely,

MIKE SYNAR
Chairman
Subcommittee on Environment,
Energy, and Natural Resources

Enclosure
Attachment

cc: Hon. Leon Panetta
Director, OMB

Hon. J. Dennis Hastert
Ranking Minority Member

ATTACHMENT TO LETTER TO ADMINISTRATOR BROWNER CONCERNING THE GAO REPORT ON DEVELOPMENT OF RADIATION PROTECTION STANDARDS

1) As stated in the EPA FY'94 Budget, the Federal Government is spending billions of dollars a year on the clean-up of its nuclear weapons facilities and hundreds of millions a year developing geologic repositories for disposal of radioactive wastes. Yet, EPA has been unable to promulgate regulations governing these activities in a timely manner. How much, in FTE's and other resources of the Office of Research and Development (ORD) are devoted to supporting the Office of Radiation and Indoor Air (ORIA) development of standards pursuant to EPA's authorities under the Atomic Energy Act, the Clean Air Act, and the Waste Isolation Pilot Plant Land Withdrawal Act, respectively?

2. The FY'94 EPA Budget request shows that ORD's direct support for radiation has been "redirected" into Air Quality Research and into Multimedia Research. The remaining ORD radiation work is limited to a reimbursable agreement with the U.S. Department of Energy. How much of the "redirected" work is in support ORIA's rulemaking missions identified in question #1?

3. A substantial portion of ORD's radiation activities is apparently devoted to work under a reimbursable contract with the Department of Energy (DOE). Of the 64.9 FTE's at ORD's Las Vegas lab who work on radiation, 60.4 of them work on the DOE monitoring contract. Even though DOE reimburses EPA for the cost of those FTE's, the personnel are EPA personnel and fall under the EPA personnel ceiling. At a time when the Agency is so short of resources and has been contracting out work because of ceilings on FTE's, why are Agency FTE's being devoted to this work for DOE and why is the Agency conducting this activity?

4. ORIA maintains a separate radiation research facility in Las Vegas, so EPA has two radiation laboratories in Las Vegas. Not counting the DOE contract, the budget for radiation work at the ORD Las Vegas lab is around $140,000 and the budget for the ORP Las Vegas facility is $599,000 for FY'93. Why does the Agency have two separate radiation laboratories in Las Vegas?

5. ORIA also has a radiation laboratory in Montgomery, Alabama with an annual budget of about $2.2 million. The principal missions of the Montgomery lab are to run the Environmental Radiation Ambient Monitoring System (ERAMS), which collects and analyzes environmental samples for radiation, and to conduct radiochemical analyses and provide quality assurance support for such analyses. Putting aside the question of whether EPA should even be spending its time doing environmental monitoring for DOE, the work at the Nevada Test Site doesn't appear to be research consistent with ORD's stated research mission within EPA. It does appear to be environmental monitoring consistent with what ORIA is doing. Why isn't ORP -- and the Montgomery lab -- in

charge of doing the environmental sampling at the Nevada Test Site instead of ORD?

6. A recent U.S. General Accounting Office (GAO) report prepared for the Subcommittee, "Radioactive Waste: EPA Standards Delayed by Low Priority and Coordination Problems" (GAO/RCED-93-126) provided to EPA, indicates that neither the ORIA Montgomery nor the ORIA Las Vegas labs aren't providing very much support to ORIA's rulemaking activities. Identify how much of the resources of these two facilities is actually devoted to support of ORIA's rulemaking activities and describe why such support is not a higher priority of these two facilities.

7. The FY'93 budget for the ORIA Las Vegas facility is about $600,000, with more than one third of that coming from other agencies. The FY'93 budget for the Montgomery lab is about $2.2 million with almost half coming from other agencies. More than half of the personnel at ORD's Las Vegas lab -- and over 90% of those who work on radiation -- work on the DOE monitoring contract. Why are these labs doing so much work for other agencies, when EPA isn't getting the technical support it needs to develop its own radiation standards?

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 24 1993

THE ADMINISTRATOR

Honorable Michael L. Synar
Chairman
Subcommittee on Environment, Energy,
and Natural Resources
Committee on Government Operations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your July 1 letter expressing concern over the Agency's radiation protection efforts. Your advice that development of radiation protection regulations be given a high institutional priority is well taken. I agree that the Agency's responsibilities for radiation standards, including those related to site cleanup and the Waste Isolation Pilot Plant (WIPP), are of major importance, and I will be well aware of them as I set priorities for Agency programs.

Let me assure you that we are increasing our emphasis on coordinating with OMB and other agencies to resolve conflicts and move forward on promulgating radiation standards. We have been making every effort to ensure that key priorities are addressed for development of these rules.

Recently, EPA reached a joint funding agreement with the Department of Energy (DOE) on FY 1994 resources to develop cleanup standards for radioactively contaminated sites and to implement the recent legislative mandates to oversee DOE's waste disposal activities at the WIPP in New Mexico. However, DOE has emphasized that this arrangement will not continue next year, and EPA will be responsible for covering the resource requirements for Cleanup Standards and WIPP in FY 1995. I have committed to DOE to request these resources in the Agency's FY 1995 budget request.

Finally, you have included a number of research and laboratory-related questions with your letter, which I am

addressing with the enclosed responses. Again, I appreciate your interest in the EPA's research and radiation programs, and look forward to working with you on these and other Agency issues.

Sincerely,

Carol M. Browner

Enclosure

RESPONSES TO QUESTIONS ATTACHED TO REPRESENTATIVE SYNAR'S LETTER TO ADMINISTRATOR BROWNER CONCERNING THE GAO REPORT ON DEVELOPMENT OF RADIATION PROTECTION STANDARDS

Question 1: As stated in the EPA FY '94 Budget, the Federal Government is spending billions of dollars a year on the clean-up of its nuclear weapons facilities, and hundreds of millions a year developing geologic repositories for disposal of radioactive wastes. Yet, EPA has been unable to promulgate regulations governing these activities in a timely manner. How much, in FTE's and other resources of the Office of Research and Development (ORD) are devoted to supporting the Office of Radiation and Indoor Air (ORIA) development of standards pursuant to EPA's authorities under the Atomic Energy Act, the Clean Air Act, and the Waste Isolation Pilot Plant Land Withdrawal Act, respectively?

Answer: The Office of Research and Development's (ORD) FY 1994 budget request does not include any resources devoted to supporting the Office of Radiation and Indoor Air's (ORIA) rulemaking efforts. All radiation related research efforts within ORD are currently focused on analytical method research or quality assurance support programs; the latter work is conducted in direct support of the Drinking Water Laboratory Certification Program and a Memorandum of Understanding between the EPA and the Nuclear Regulatory Commission. These programs involve the conduct of performance evaluation studies for radionuclides and distribution of radioactive reference materials.

Question 2: The FY '94 EPA Budget request shows that ORD's direct support for radiation has been "redirected" into Air Quality Research and into Multimedia Research. The remaining ORD radiation work is limited to a reimbursable agreement with the U.S. Department of Energy. How much of the "redirected" work is in support ORIA's rulemaking missions identified in question #1?

Answer: In FY 1994, ORD redirected 23.1 FTE and associated salary and travel resources (PRO) and $98,700 in R&D funds from Radiation research into Air Quality and Multimedia research. None of these resources are devoted to supporting the Office of Radiation and Indoor Air's (ORIA) development of standards pursuant to EPA's authority under the Atomic Energy Act, the Clean Air Act, and the Waste Isolation Pilot Plant Land Withdrawal Act.

However, 9.3 of the redirected FTE will continue to support radionuclides in water and radon research efforts. ORD has redirected 4.5 FTE and associated PRO into Multimedia research to consolidate and better manage ORD's radiation quality assurance research efforts. In addition, 4.8 FTE were redirected into Air Quality research to support in-house radon mitigation studies.

Question 3: A substantial portion of ORD's radiation activities is apparently devoted to work under a reimbursable contract with the Department of Energy (DOE). Of the 64.9 FTE's at ORD's Las Vegas lab who work on radiation, 60.4 of them work on the DOE monitoring contract. Even though DOE reimburses EPA for the cost of those FTE's, the personnel are EPA personnel and fall under the EPA personnel ceiling. At a time when the Agency is so short of resources and has been contracting out work because of ceilings on FTE's, why are Agency FTE's being devoted to this work for DOE and why is the Agency conducting this activity?

Answer: Nuclear testing at the Nevada Test Site (NTS) began in January 1951. It soon became apparent that the residents living near the NTS required that the Offsite Radiation Safety Program (ORSP) for the NTS be conducted by an independent Federal agency. Through a Memorandum of Understanding between the Atomic Energy Commission (AEC) and the Public Health Service (PHS), the ORSP became the responsibility of the PHS in 1954. When the EPA was created in 1970, the responsibility for the ORSP was transferred from PHS to EPA. The PHS facility which conducted the ORSP, the Southwestern Radiological Health Laboratory, and its personnel, were also transferred to EPA. This facility was the genesis of the Environmental Monitoring Systems Laboratory-Las Vegas (EMSL-LV).

In 1978 there were 120 plus reimbursable FTEs dedicated to the ORSP. EPA reduced this number to 62, redirecting the remainder. This resulted in the 1979 reduction-in-force that took place at EMSL-LV. At that time, the DOE expressed their concern to the Office of Management and Budget (OMB). OMB agreed with DOE that these were FTEs provided to EPA at EPA's inception for the conduct of the ORSP. OMB allowed EPA to retain the reassigned FTEs, but the remaining 62 reimbursable FTEs were dedicated to the ORSP, and could not be reassigned.

The ORSP provides the framework for documenting radiation exposures and assuring the health and safety of populations living near the Nevada Test Site and other nuclear testing sites. For each nuclear test, EMSL-LV provides a senior scientist to the DOE Test Controller's Scientific Advisory Panel for Nuclear Weapons Testing to assure the health and safety of offsite residents. Mobile monitoring teams are deployed around the Nevada Test Site. They are prepared to take any actions needed to protect the health and well-being of the public and to sample, assess, and document the environment for any possible radiation effects. An integrated program of environmental monitoring, sampling, analysis, exposure assessment and quality assurance measures and documents offsite radiation levels on a continuing basis. Surface and groundwater samples are collected from on and

around NTS. To assure public safety, monitoring is also conducted in areas of past underground nuclear tests located on Amchitka Island in the Aleutians, Colorado, Nevada, New Mexico, and Mississippi.

The program is designed to assure the health and safety of the people living around the NTS in both rural and urban environments regardless of socioeconomic or ethnic background.

Question 4: ORIA maintains a separate radiation research facility in Las Vegas, so EPA has two radiation laboratories in Las Vegas. Not counting the DOE contract, the budget for radiation work at the ORD Las Vegas lab is around $140,000 and the budget for the ORP Las Vegas Facility is $599,000 for FY '93. Why does the Agency have two separate radiation laboratories in Las Vegas?

Answer: The two radiation laboratories in Las Vegas have separate missions and functions, which relate directly to their respective parent organizations.

The Office of Radiation and Indoor Air's Las Vegas Facility (LVF) provides analytic support and a Western base of operations for on-site observations and inspections of DOE activities at the Waste Isolation Pilot Plant (WIPP), consistent with EPA's assigned roles there. In addition, LVF supports ORIA's efforts mandated under the Indoor Radon Abatement Act, particularly for functions dealing with the Radon Measurement Proficiency Program; conduct of training and exercises and maintenance of equipment necessary to support monitoring staff for deployment to the field in the event of a domestic accidental release of radiation; and assistance to EPA's Regional Offices needing field support.

The Environmental Monitoring Systems Laboratory-Las Vegas (EMSL-LV) program provides methods research and quality assurance in direct support of the Drinking Water Certification Program and Nuclear Regulatory Commission reactor licensing activities. Currently, all of the EPA Regional Offices, each of the 50 States, and the NRC are supported by the EMSL-LV program. Support to the State and EPA is in the form of 1) on-site evaluation of State drinking water laboratories; 2) conduct of performance evaluation studies consisting of approximately 350 State, regional, and commercial laboratories; 3) recommendations to EPA Regional Radiation Program Managers for certification of State drinking water laboratories; and 4) distribution of standard reference materials in order to assure intercomparability of drinking water compliance data. NRC support is in the form of special reference materials and performance evaluation studies that are required by NRC of all nuclear utility reactor licensees. EMSL-LV's mission also

includes developing and applying field techniques, analytical methods, and remote sensing systems for monitoring all environmental pollutants, not just radioactive material.

Question 5: ORIA also has a radiation laboratory in Montgomery, Alabama with an annual budget of about $2.2 million. The principal missions of the Montgomery lab are to run the Environmental Radiation Ambient Monitoring System (ERAMS), which collects and analyzes environmental samples for radiation, and to conduct radiochemical analyses and provide quality assurance support for such analyses. Putting aside the question of whether EPA should even be spending its time doing environmental monitoring for DOE, the work at the Nevada Test Site doesn't appear to be research consistent with ORD's stated research mission within EPA. It does appear to be environmental monitoring consistent with what ORIA is doing. Why isn't ORP -- and the Montgomery lab -- in charge of doing the environmental sampling at the Nevada Test Site instead of ORD?

Answer: The Environmental Radiation Ambient Monitoring System (ERAMS) is designed to provide information about radiation levels in air, precipitation, surface water, drinking water, and milk, on a national basis, which is a unique characteristic of this network. The media focus in ERAMS is on ingestion pathways. Thus, ERAMS analyzes composite samples from a given media approximately every three months for the full range of radionuclides, including fission products. However, it does not conduct these exhaustive analyses on every sample as it is collected unless there is reason to believe there may be unusual activity present, as when atmospheric testing of nuclear weapons was being conducted. The sample collection is principally through voluntary participation by State employees or those of other Federal agencies; sampling regimens and the laboratory analytical capabilities of the National Air and Radiation Environmental Laboratory in Montgomery, AL, are designed to support this function.

Since its establishment by the Public Health Service in 1954, the laboratory which is now the Environmental Monitoring Systems Laboratory (EMSL-LV) has been responsible for environmental monitoring at US nuclear test sites. EMSL-LV staff have the experience and expertise to conduct the specialized sampling and analysis required at the Nevada Test Site as well as at the nation's other nuclear test locations in Alaska, Colorado, New Mexico, and Mississippi. The laboratory conducts the Offsite Radiation Safety Program (ORSP), which directly measures environmental radiation levels and determines the quantity of man-made radioactive materials contributed by the nuclear weapons testing program by collecting and analyzing samples of air, water, soil, foodstuffs, and biota, as well as providing whole body counting of residents living in the vicinity of the Nevada Test Site and other sites where nuclear tests have been

previously conducted, e.g. White Sands, NM. The purpose of this activity is to assess and document radiation exposure of the public in the region surrounding the site, to take any actions needed to protect the health and well-being of the public, to determine compliance with applicable guidelines or legal requirements, and to assess and document any radiation effects on the environment.

Question 6: A recent U.S. General Accounting Office (GAO) report prepared for the Subcommittee, "Radioactive Waste: EPA Standards Delayed by Low Priority and Coordination Problems" (GAO/RCED-93-126) provided to EPA, indicates that neither the ORIA Montgomery nor the ORIA Las Vegas labs aren't providing very much support to ORIA's rulemaking activities. Identify how much of the resources of these two facilities is actually devoted to support of ORIA's rulemaking activities and describe why such support is not a higher priority of these two facilities.

Answer: At this time, approximately 4 FTE and associated salary and travel costs (PRO) assigned to the two ORIA laboratories are directly related to ORIA's rulemaking activities. An additional 11.8 FTE, along with their PRO costs, are involved in performing functions at the laboratories directly related to other ORIA HQ activities being conducted under Congressional mandates or authorizations, such as the Indoor Radon Abatement Act.

ORIA laboratories have traditionally provided the analytic and technical support required by ORIA for rulemaking activities. The level of resource commitment varies based on the types of rules being written and the support needed to ensure that different rulemaking efforts are based on the best available scientific information.

The two ORIA labs conduct field and laboratory measurements, perform dispersion and dose computer modeling, and prepare background information documents in support of ORIA rulemaking. In recent years, the labs have produced such reports as Potential Health and Environmental Hazards of Uranium Mine Waste: A Report to Congress; High-Level and Transuranic Radioactive Waste: Background Information Document for the Final Rule; and a Long-Term Study of Radon and Airborne Particulates at Phosphogypsum Stacks in Central Florida for a rulemaking under the Clean Air Act. These and similar reports have provided ORIA the scientific basis on which to develop its rules. The ORIA's Las Vegas Facility is currently preparing to provide significant technical support for ORIA's oversight responsibilities at the Waste Isolation Pilot Plant operated by DOE.

Question 7: The FY '93 budget for the ORIA Las Vegas facility is about $600,000, with more than one third of that coming from other agencies. The FY '93 budget for the Montgomery lab is about $2.2 million with almost half coming from other agencies.

More than half of the personnel at ORD's Las Vegas lab -- and over 90% of those who work on radiation -- work on the DOE monitoring contract. Why are these labs doing so much work for other agencies, when EPA isn't getting the technical support it needs to develop its own radiation standards?

Answer: The two ORIA labs have well-established reputations in the radiation community based on the skill of their scientific and technical staff in delivering accurate and timely work products in very efficient and dependable operations. As a result, services of the labs are often sought by other agencies when dealing with a variety of environmental radiation issues which require field measurements, laboratory analyses, methods development, or other functions which are available in the ORIA labs. The ORIA laboratories may accept work requests which support other agencies only when several conditions are met: 1) the requesting agency must reimburse ORIA for those portions of the work which require the Agency to expend FTE, as well as contract, equipment, or travel funds; 2) the Agency staff overseeing the work must not be diverted from work directly supporting ORIA projects; 3) the work must be along the lines of tasks or investigations which are of relevance to ORIA in performance of its own radiation protection mission; and 4) there must be no real or apparent conflict of interest involved in performing the work. This arrangement also represents a net savings in costs to the public by allowing other agencies to use the ORIA labs for limited applications.

Annual salary costs for the Montgomery lab are approximately $2 million; for ORIA's Las Vegas Facility they are almost $1 million annually. When these costs are included in the laboratory budgets, the proportion of operating funds provided by other agencies is significantly reduced. In addition, the funds provided by other agencies are frequently "multi-year". For example, NAREL received $800,000 from the Agency for Toxic Substances and Disease Registry in FY '93, but the performance period for the work will extend at least through FY '94. Thus, on an annual basis, the share of funds from other agencies spent by the labs is substantially reduced.

The personnel assigned to the ORSP at EMSL-LV are funded through a Memorandum of Understanding originally executed between the Atomic Energy Commission and the Public Health Service. When EPA redirected a portion of the original complement to other activities in 1978, the Office of Management and Budget allowed this action over the complaint of the Department of Energy, with the provision that the remaining FTE could not be reassigned.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 9 1993

THE INSPECTOR GENERAL

Honorable J. Dennis Hastert
Ranking Minority Member
Subcommittee on Environment, Energy and
Natural Resources
Committee on Government Operations
House of Representatives
Washington, DC 20515-1314

Dear Mr. Hastert:

We are submitting this letter in response to Congressman Mica's questions regarding our report on the use of Cooperative Research and Development Agreements (CRADAs) by EPA's Environmental Monitoring Systems Laboratory in Cincinnati (EMSL-Cin).

Before providing our responses to Congressman Mica's specific questions, we want to reemphasize that the Office of the Inspector General does not question the desirability of the Federal Technology Transfer Act or EPA's authority to enter into CRADAs (EPA is currently involved in at least 44 CRADAs). Our concerns relate to the five quality assurance (QA) materials CRADAs and whether it is good policy for EPA to enter into any agreement that places the Agency in competition with the private sector for market share. This is particularly important when EPA regulates the users of the products being sold. We found that the five QA materials CRADAs place the Agency directly in competition with an existing industry for the sale of materials to users that are being regulated by EPA. We are concerned that there may no longer be a "level playing field" within the industry due to the establishment of these CRADAs.

The Government, as a regulator, must be neutral, not biased in any way. In the case of the QA materials CRADAs, EPA does not appear to be neutral. EMSL-Cin entered into these five CRADAs with the intention of increasing its income in order to fund its QA materials program. By requiring the CRADA companies to label the materials as "EPA Certified," the laboratory created a significant competitive advantage over non-CRADA products. Thus, conditions were established for a monopoly market to develop favoring the five CRADA companies. These conditions, if allowed to develop, have the potential for EMSL-Cin to receive substantial income. This could result in a serious conflict of interest between the Agency's need to administer fair and

equitable regulation and a desire to increase revenues from the sale of reference materials used by the regulated industry.

Specific questions and answers are addressed in the enclosure. Should you or your staff wish further discussion, please contact Kenneth A. Konz, Assistant Inspector General for Audit, on (202) 260-1106.

Sincerely,

for John C. Martin

Enclosure

Questions and Answers

1. In support of your position that the EMSL-Cincinnati CRADAs are controversial, you note that the CRADAs were challenged in a lawsuit. However, you failed to mention that the lawsuit was dismissed by the United States District Court for the Eastern District of Pennsylvania on January 12, 1993. Why did you omit this pertinent fact in the Audit Report?

   The EPA patent counsel informed us that the lawsuit was dismissed "not on the merits of the case" but on a technicality because the court ruled the plaintiff "lacked standing" to bring action. The plaintiff had 30 days to refile the case. The case was refiled.

2. In the Executive Summary of the Report, you state that the Report is not intended to imply that the Cincinnati CRADAs are illegal or were the result of illegal action. Additionally, you state that the intent of the Federal Technology Transfer Act (FTTA) is open for discussion. In view of the Report's admission that the recommendations are not based on the law or the intent of the law, isn't it fair to say that the Report's recommendations are based on your policy judgement?

   We believe the use of CRADAs to fund an EPA program is a policy issue that must be addressed by top Agency officials. Specifically, is it a good policy for EPA to enter into any agreement that places the Agency in competition with the private sector for market share? This is particularly important when EPA is regulating the users of the products being sold. We found that these five CRADAs place the Agency directly in competition with an existing industry for the sale of materials to users that are being regulated by EPA. We are concerned that there may no longer be a "level playing field" within the industry due to the establishment of these CRADAs.

   The Government, as a regulator, must be neutral, not biased in any way. In the case of these five CRADAs, EPA does not appear to be neutral. The EMSL Laboratory entered into these five CRADAs with the intention of increasing its income in order to fund its Quality Assurance (QA) materials program. By requiring the CRADA companies to label the QA materials as "EPA Certified," the laboratory created a significant competitive advantage over the non-CRADA products. Thus, conditions were established for a monopoly

market to develop favoring the five CRADA companies. These conditions, if allowed to develop, have the potential for EMSL-Cin to receive substantial income. This could result in a serious conflict of interest between the Agency's need to administer fair and equitable regulation and a desire to increase revenues from the sale of reference materials used by the regulated industry.

Much of the discussion about the applicability of the FTTA, the amount of research and development being performed, and what constitutes a monopoly are relevant and help to establish an understanding of what occurred. However, these discussions only cloud the basic issue: Should EPA franchise these five companies to have the exclusive right to produce and sell "EPA Certified" material to the industry that EPA is regulating, or is EPA (as we believe) in a potential conflict of interest between making decisions for fair and equitable regulations or increasing its revenue.

3. One reason that the Report gives for recommending cancellation of the EMSL-Cincinnati CRADAs is that the CRADAs create a potential government-controlled monopoly.

Chapter 4 of our report discusses the potential government-controlled monopoly.

a. What is a potential government-controlled monopoly?

Before the five QA materials CRADAs were established, reference materials and quality control (QC) samples were not identified as "EPA Certified." The materials were simply manufactured and distributed by EPA's contractors. In actual practice, alternate sources for QA materials were clearly condoned and most of the market was satisfied by alternate sources. Since the establishment of the CRADAs, there is a developing impression in the marketplace that products which carry the EPA name and logo are superior and are required.

Under the five QA materials CRADAs, the companies are required to sell their materials (both the inventory made available by EMSL-Cin and newly manufactured materials) as "EPA Certified." EMSL-Cin receives a percentage of sales of CRADA company QA materials. Other firms in the industry manufacture similar QA materials. The EPA certification provides an exclusive status to CRADA products. Officials of several companies in the environmental QA materials field said that the sale by CRADA companies of "EPA Certified" materials had damaged sales of non-CRADA companies and could, in the extreme, put them out of the QA materials business. This could result in the creation of a

Government-controlled monopoly and a serious conflict between the administration of fair and equitable regulations and the desire to increase the laboratory's revenues.

b. Did your office perform any market share or economic analysis to support its monopolization claim?

We discussed the QA materials market and the CRADAs with officials from the five CRADA companies and seven other companies that manufacture and sell QA materials that compete with CRADA products. Non-CRADA company officials described confusion and uncertainty within the user community over whether "EPA Certified" products were required and where the materials could be obtained. This often resulted in a loss of orders and ultimately the loss of customers. Many interested parties are being affected by the introduction of "EPA Certified" materials into the marketplace, including manufacturers, users, and regulatory authorities.

As was noted in our report, the Agency performed no survey or market analysis prior to entering the CRADAs. Had a survey or market analysis been performed, we would have examined the results.

c. How much of a market must the government control to constitute a potential government-controlled monopoly?

The potential for a government-controlled monopoly could exist without any control at all. CRADA companies are one group of interested parties on this issue; non-CRADA companies and others also have vital interests in these proceedings. Officials from non-CRADA companies expressed concern over their business prospects as "EPA Certified" materials are eventually required. One company official said their successful and expanding business would be "cut off at the knees."

4. As evidence that the Cincinnati CRADAs create a potential monopoly, the Report cites price increases for certain QA materials. However, the Report fails to note whether the reported price increases are for the market as a whole or merely for CRADA companies.

The examples of price increases contained in the OIG report were for CRADA companies and compared their pre-CRADA prices with their CRADA prices. The price of Strobane increased 171.4 times.

a. Did you do any research to determine whether price increases also were made by non-CRADA companies? What were the results of your research and what conclusions did you draw?

We discussed CRADA prices with all companies we visited. Two companies performed price comparisons for us which demonstrated increased prices for the CRADA products. All non-CRADA companies confirmed that CRADA prices were higher than non-CRADA prices.

b. According to the Report, you were unable to obtain a reasonable explanation for the price increases. Who did you ask and what explanations did you receive? Why did you consider the aforementioned explanations unreasonable?

We questioned EMSL-Cin officials concerning price increases and discussed pricing methods used with the CRADA companies. In our opinion, a cost increase does not appear to be justified since each company received a substantial inventory for free, and these companies were already in the business.

c. Is it possible that the alleged price increases could be attributable to causes other than "monopolization"?

One non-CRADA company cited a price increase of 20 percent due to increased advertising caused by the CRADAs.

5. The Report concludes that the CRADAs are an inappropriate use of the FTTA because no new technology has been transferred to the private sector. Additionally, the Report faults the CRADAs for failing to result in patent applications. What section(s) of the FTTA are you relying upon to support your contention that CRADAs are required to result in "new" and "patentable" technologies?

We base our opinion that the QA materials CRADAs are an inappropriate use of the FTTA on the following:

-- **On October 20, 1986, Congress passed the FTTA to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer. The legislative history reveals that the FTTA originated from a concern that only 5 percent of Government-owned patents were utilized in the private sector. The purpose of the Act was to speed the transfer of patents and technology to the private sector and, thus, improve the economic, environmental, and social well-being of the United States.**

-- On April 10, 1987, the President signed Executive Order 12592 implementing FTTA, ". . . in order to ensure that Federal agencies and laboratories assist universities and the private sector in broadening our technology base by moving new knowledge from the research laboratory into the development of new products and processes." (emphasis added)

-- The Decision Memorandum signed by the EPA Administrator on December 15, 1988, approving the EPA delegation and the EPA Order to implement the FTTA stated, "The Federal Technology Transfer Act was designed to foster collaboration between Federal agencies and State and local governments, universities, and private industry in order to improve U.S. competitiveness in the world market place." (emphasis added)

-- The General Accounting Office, in its December 1992 report, "Technology Transfer, Barriers Limit Royalty Sharing's Effectiveness" (GAO/RCED-93-6), stated that the FTTA was enacted in response to concern about U.S. industry's weakened competitive position in domestic and international markets and, along with earlier legislation, the Act was intended to promote the patenting and licensing of suitable invention technology. (emphasis added).

It is our opinion that the QA materials CRADAs are an inappropriate use of the FTTA. The CRADAs provided for (1) the transfer and sale of the old inventory, (2) the manufacture and sale of replacement products, and (3) the design, manufacture, and sale of future materials which historically have been unpatentable processes or products. It appears officials at EMSL-Cin used the FTTA as a means to keep their QA program operating and, in the process, violated the spirit of the FTTA by creating a situation that could harm and, in the extreme case, eliminate several small U.S. companies.

6. Doesn't your recommendation to cancel the Cincinnati lab's CRADAs for nonstatutory reasons such as a lack of newness or an absence of patents run directly counter to the Administration's directive to remove obstacles to CRADAs as outlined in the Presidents new initiative entitled "Technology for America's Economic Growth, a New Direction to Build Economic Strength" which was presented in a White House report dated February 22, 1993.

No, our recommendation does not run counter to the Administration's directive. As stated before, we do not question the desirability of the FTTA or EPA's authority to enter into CRADAs. We do question the appropriateness of

EPA's involvement in the five QA materials CRADAs and believe the transfer of old technology or technology already in use by the industry under these CRADAs serves little purpose as intended by the FTTA.

7. In the Report, you refer to a "thriving market" that existed prior to the CRADAs and that it was "crippled by the CRADAs."

   a. Since EPA gave away chemical standards in large quantities instead of selling them as it now does, shouldn't the fact that EPA now sells rather than gives away standards actually help competitors in this market?

As we stated in our report, a thriving market for reference materials developed during the period that EPA was providing the materials for free. This market developed because private companies were able to develop specific products to meet user needs and provide them on a timely basis. Industry competition caused manufacturers to continually improve their products to gain and hold a niche in the market. As a result, many new products were developed such as multi-component materials, materials in more than one volume, and containers that can be opened and resealed. As a result, the products EPA was giving away were only somewhat competitive in the market place. To sell them the CRADA companies needed a marketing edge. The granting of "EPA Certified" provided that edge by implying that users must use these products. When asked how they benefitted from the CRADA arrangement, one CRADA company stated that "EPA Certified" is perceived as being prestigious in the user community and this carries over to the company's other products. Another CRADA company stated that the USEPA label gives credibility to their small company and brings them recognition. Only the CRADA companies can produce "EPA Certified" products. Thus the marketing advantage goes to the CRADA companies.

   b. Who were the participants in the "thriving market" for standards certified by an independent body?

As pointed out in the report, there are approximately 25 companies participating in this market.

   c. Are these participants still in the market?

EPA recently began a study to survey the reference materials market, including an examination of suppliers, users, and products available. The Agency plans to issue a report by the end of fiscal 1994 that will include an up to date answer to this question.

d. Are they selling fewer standards today than before the CRADA's were initiated? If so, did you investigate whether the CRADA cooperators are also selling fewer standards today than were distributed under EPA's prior programs reflecting a general downturn in the market?

In discussions with officials from the 12 companies we visited, the market is generally growing due to increased regulatory requirements. The increased regulatory requirements, we believe, is an additional reason for EPA to not compete in the reference materials market.

8. If a primary purpose of the FTTA is to strengthen U.S. competitiveness in the world marketplace, as the Report states on page 27, how can this be accomplished if federal agencies are not allowed to enter CRADAs directed to technologies that the CRADA company will use to compete in the marketplace?

We did not suggest that EPA, or any other agency, should not use FTTA to transfer technology through a CRADA to private industry, nor did we suggest that these companies should not be able to use this technology to develop new products. Our concern is specific to the five CRADAs used by EMSL-Cin and its companies to sell reference materials.

9. You contend that the Cincinnati lab entered into the royalty agreements "with the intention of increasing its income." Don't the royalty payments reduce the costs of the CRADA program to the taxpayers?

In 1986, EPA asked OMB for permission to charge user fees as a means to defray the costs of providing QA materials. When OMB ruled that any funds collected had to be deposited in the U.S. Treasury, EMSL-Cin abandoned its plan to sell the materials.

When the FTTA was passed in 1986, EMSL-Cin officials saw an opportunity to obtain funds to offset budget reductions and continue the QA materials distribution program. The Act permitted Federal laboratories and their employees to collect royalties from patents and licensing agreements for Government-owned inventions. In 1991, using the FTTA as its justification, EMSL-Cin entered into CRADAs with five companies for the purpose of developing and selling QA materials. The CRADAs stipulated that EMSL-Cin would receive a percentage of the companies' sales for both the EPA inventory materials made available for sale by the companies under the agreements and the new materials manufactured by the companies.

No royalty payments or licensing fees have been made to EPA or any individual as a result of these five CRADAs. All of the funds received by EMSL-Cin were in the form of a commission based on sales of reference materials. Any funding received by the government offsets the cost of government operations. User fees were the OMB condoned approach to offset the government's costs for this program.

10. Please describe the kinds of evidence that you examined to determine that no research and development (R&D) is being performed? Would your view change if you knew that standards or QC samples were being developed using research and development?

We continue to believe that the primary purpose of these CRADAs is the marketing and sale of "EPA Certified" QA materials. EMSL-Cin officials told us the reason for initiating the CRADAs was to fund their QA program. As we described in our report, research and development is continually being performed by EPA and at least some CRADA and non-CRADA companies. The company officials we interviewed told us that they performed research, and the major emphasis of this research was market analysis and the development of new QA materials to meet evolving user needs.

11. How many companies made hotline complaints to your office about the CRADAs? Who are they?

Officials from two companies contacted the OIG hotline office with complaints relating to the QA materials CRADAs. In addition, the Office of Audit received calls from representatives of at least five other firms having similar concerns. Calls to the hotline are treated confidentially.

12. Did any of the companies that made complaints to your office submit proposals for one or more CRADAs?

As stated above, complaints to our office are treated in a confidential manner.

13. Were the findings of the draft report discussed with non-CRADA firms before the report was issued?

No. Findings were only discussed with EPA. The progress of the audit and issues of relevance were discussed in general terms with all interested parties (CRADA, non-CRADA, and general public) during the course of the audit.

a. If yes, please provide details concerning the substance of these discussions and identify the firms with whom such discussions took place.

Not applicable.

b. Was the draft report itself provided to anyone outside EPA? If yes, who?

No.

c. Were the CRADA firms given the opportunity to review and comment on the draft report? If so, which firms? If not, why not?

No. The draft report was provided only to EPA because it was an audit of Agency operations.

14. Does your office have any evidence that EPA has, in fact, discriminated against firms that use non-CRADA samples?

EMSL-Cin officials have endorsed "EPA Certified" products. For example, an EMSL-Cin official in a letter to the National Oceanic and Atmospheric Administration recommended they specify "EPA Certified Materials" when ordering QA materials from retailers. Also, the laboratory director said EMSL-Cin employees receiving requests for QA materials would inform buyers they could only vouch for "EPA Certified" materials.

15. Are there other agencies within the government, state or federal, that certify either systems or products?

We did not observe that other governmental agencies certify systems or products during the course of our audit, and an exhaustive search for other such programs was beyond the scope of our work.

16. In the Report you claim that a person with "a bachelors degree in chemistry and some minimal experience" could produce the CRADA samples. In fact, haven't the CRADAs involved the development of quality assurance samples as well as the remanufacture and certification of old samples? Isn't the laboratory justified in seeking to ensure that this work is done by the most qualified people it can find?

It was not our claim that a person with "a bachelors degree in chemistry and some minimal experience" could produce the CRADA samples. We were told this by people in the industry. We were told by EMSL-Cin and CRADA company officials that some new materials have been developed under the CRADA. We

are not sure what is meant by remanufacture. If it means the manufacture of a lot of a particular material when existing stock is depleted, or determined unacceptable, that has occurred. If it means mixing an existing lot and repackaging it as a new lot, we do not know. We would wonder if that would be a scientifically acceptable practice.

We agree that the laboratory is justified in seeking to ensure work is done by the most qualified people, but we question whether these CRADAs were the appropriate way to accomplish their purpose.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
THE INSPECTOR GENERAL

March 31, 1993

MEMORANDUM

SUBJECT: Audit Report No. E6ABF2-11-0032-3100153
Use of Cooperative Research and Development
Agreements by EMSL-Cincinnati

FROM: Kenneth A. Konz
Assistant Inspector General for Audit

TO: Gary J. Foley
Acting Assistant Administrator for
Research and Development

Attached is our report entitled "Use of Cooperative Research and Development Agreements by EMSL-Cincinnati." The overall objectives were to determine if officials at Environmental Monitoring Systems Laboratory in Cincinnati:

-- created a Government-controlled monopoly by granting five CRADA companies the exclusive use of the term "EPA Certified" and by allowing the use of the EPA logo in marketing the QA materials,

-- complied with all authorizing legislation in establishing the five CRADAs to manufacture and sell QA materials, and

-- misused EPA's regulatory authority by becoming intimately involved in marketing QA materials being sold to the regulated industry.

The report contains important findings and recommendations regarding the subject area.

Action Required

In accordance with EPA Order 2750, we have designated the Assistant Administrator for Research and Development as the Action Official for this report. As the Action Official, he is to provide this office with a written response to the audit report within 90 days of the final audit report date. For corrective actions planned but not completed by the response

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date, reference to specific milestone dates will assist this office in deciding whether to close this report. We have no objections to further release of this report to the public.

This audit report contains findings and recommendations that describe problems the Office of Inspector General has identified and corrective actions that we recommend. The audit report represents our opinion. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this audit report do not necessarily represent the final EPA position.

Should you have any questions about this report, please contact me at 260-1106 or Edward Gekosky, Divisional Inspector General for Audit, Headquarters Audit Division, at 703-308-8222.

Attachment

EXECUTIVE SUMMARY

The Office of the Inspector General (OIG) received allegations that officials at the Environmental Monitoring Systems Laboratory (EMSL-Cin) misused the Federal Technology Transfer Act (FTTA) by entering into Cooperative Research and Development Agreements (CRADAs). The CRADAs granted exclusive rights to five companies to manufacture and sell quality assurance (QA) materials that previously had been provided free of charge. Further, by allowing the five CRADA companies to advertise their products as "EPA Certified", they disrupted a thriving U.S. industry, which resulted in Congressional inquiries and hotline complaints to the OIG. As a result of the allegations, we initiated a review to determine if officials at EMSL-Cin:

-- created a Government-controlled monopoly by granting five CRADA companies the exclusive use of the term "EPA Certified" and by allowing the use of the EPA logo in marketing the QA materials;

-- complied with all authorizing legislation in establishing the five CRADAs to manufacture and sell QA materials; and

-- misused EPA's regulatory authority by becoming intimately involved in marketing QA materials being sold to the regulated industry.

BACKGROUND

In the early 1970s, new regulations required testing for hazardous chemicals in the environment. EPA began a program to develop and distribute free of charge the materials needed to calibrate and test instruments used by the regulated community. At the time, many of these materials were not available. A thriving industry emerged over the years because the private sector developed products to meet market needs and could deliver them more quickly than EPA.

In the mid 1980s, due to a combination of increased costs and budget reductions, EMSL-Cin began looking for ways to continue funding its QA program. When FTTA was enacted in 1986, EMSL-Cin saw an opportunity to obtain funds to offset budget reductions and continue operating its QA program. FTTA allows Government-operated laboratories to enter into agreements with other Federal agencies and private industry to encourage the development and transfer of technology to the private sector. The Act, for the first time, permitted Federal laboratories and employees to collect royalties from patents and licensing agreements for Government-owned inventions.

In 1991, EMSL-Cin entered into CRADAs with five companies for the purpose of developing and selling the QA materials previously given away by EPA. Under the agreements, the five companies were required to label their products as "EPA Certified." EMSL-Cin also made available about 750,000 ampuls of QA materials valued at $26 million or more (if all were sold) to the CRADA companies. The agreements stipulated that EMSL-Cin would receive a percentage of the CRADA companies' sales for both the transferred inventory and new materials manufactured by the CRADA companies.

RESULTS-IN-BRIEF

EPA created conditions for the development of a Government-controlled monopoly by entering into the QA materials CRADAs. Only the five companies with which EMSL-Cin has cooperative agreements can advertise the products they manufacture as "EPA Certified", while other firms which manufacture similar materials cannot. Under terms of the CRADAs, EMSL-Cin provided the five companies a substantial inventory of QA materials which had been produced by EPA and its contractors. EMSL-Cin receives revenues based on sales of CRADA company products (both the transferred inventory and subsequently manufactured materials) which will continue funding its QA program. By establishing these CRADAs, EMSL-Cin granted an exclusive right to the companies which created a condition for a monopoly market to develop. Some indication that a monopoly may be developing is that QA materials prices increased substantially from 1990 to 1991, the year the CRADAs were established.

By requiring the CRADA companies to market their products as "EPA Certified", the Agency created the appearance of a conflict of interest because it placed itself in a situation where it must choose between fair and equitable regulation and a desire to increase revenues through sales of QA materials used by the regulated industry. As a regulator, the Government must not be biased in any way towards the community it is regulating. When industry had the capability to provide the QA materials needed by the user community, EMSL-Cin should have withdrawn from the marketplace rather than placing itself in a position where it uses the regulated industry to compete for a share of the market for QA materials. Also, by making marketable QA materials available to the CRADA companies, EMSL-Cin provided a source of funds to the companies, which is not permitted under FTTA. We consider the inventory of QA materials produced by EPA and its contractors to be Government property. In our opinion, it is inappropriate for EPA to retain funds from the sales of QA materials which were formerly part of EPA's inventory.

Finally, EPA justified these CRADAs under the Federal Technology Transfer Act. We believe that technology transfer is

required under the Act, and that no technology transfer occurred for these five CRADAs. The marketable inventory that was made available to the companies, and the ability to produce it were widely available throughout the industry for years. Further, the FTTA requires that resources provided by a laboratory under a CRADA be used toward the conduct of "specified research and development efforts." The transferred inventory was not used in "specified research and development"; it was transferred, along with the right to use the EPA logo and use of the term "EPA Certified", to aid the marketing efforts. Sales meant a return of funds to the laboratory.

RECOMMENDATION

We want to ensure that the Agency is no longer in a position in which it competes with private industry, particularly through inappropriate channels. We recommend that the Acting Assistant Administrator for Research and Development, instruct the Director, EMSL-Cin, to take immediate action to cancel the laboratory's participation in these five CRADAs, recover any inventory which had been made available to the five companies under the agreements which has not yet been sold, and determine the proper method to dispose of those QA materials that are not needed to meet any existing obligations such as required regulations or memorandums of understanding with other agencies. Some methods which should be considered are: continue distributing the material until supplies are exhausted, auction off the material to the highest bidder, and/or properly dispose of the remaining material as hazardous waste.

AGENCY COMMENTS AND OIG EVALUATION

The Office of Research and Development (ORD) did not agree with the conclusions and recommendations contained in the OIG draft report. ORD officials were concerned that our draft report discussed their personal motivations for entering into these five CRADAs. They claimed that we were implying they had some ulterior motive for their actions and that they were only concerned with making money for the laboratory. At best, individual motive would be difficult to audit, and we did not intend to imply we had special insight into individual motives. We formed our conclusion from the results of our audit of the activities of EMSL-Cin and the CRADA companies over the last 3 years. Consequently, we believed the statement, reiterated to us many times during the audit, that the CRADAs were the result of an effort to offset budget cuts and to assure the availability of high quality reference materials. The discussion in Chapters 2 and 3 does not concern personal motivations. Rather, the discussion supports our contention that the QA materials CRADAs are bad policy for EPA because they create a conflict between the

Agency's ability to regulate and its desire for income from the sale of reference materials to the regulated industry. In our opinion, ORD should withdraw from such activity.

ORD officials objected to our assertion that the five QA materials CRADAs created a condition for a Government-controlled monopoly to develop. We agree with their assertion that we did not prove that a monopoly existed. However, based on the results of our audit, we contend that these CRADAs create the conditions for the companies to expand their market share to the point that they will dominate the market. This condition does not exist now, but the ability of the CRADA companies to sell their products as "EPA Certified" gives them the marketing edge needed to ultimately dominate the market.

ORD officials also argued that the CRADAs were legal and meet the intent of FTTA. We did not allege, nor did we intend to imply, that these five CRADAs were illegal, or were the result of any illegal action. We claimed in our draft report that the CRADAs did not meet the intent of FTTA. We agree with ORD officials that the FTTA objectives are broadly written and intent is open to discussion. However, we still believe that these five CRADAs are an inappropriate use of the FTTA. First, it is unclear what, if any, technology was transferred. Second, providing the existing inventory to the CRADA companies, requiring they be identified as "EPA Certified", and the activities of the CRADA companies clearly indicate the marketing emphasis. We, therefore, have not changed our basic position as discussed in Chapter 4.

On page 12 of ORD's written comments (see Appendix 1) ORD concluded that the FTTA was the proper mechanism for improving the quality of reference materials available from the private sector. ORD proposed several alternative actions to our recommendation. The first three actions include:

-- improving the technical and managerial oversight of the CRADA program;

-- tabulating the inventory made available to the CRADAs, the number of samples sold, and the number of samples needed until new samples are manufactured; and

-- performing an industry-wide survey to determine the quality and availability of reference materials available in the marketplace.

These are, obviously, important steps to take. However, we do not understand why such steps were not performed before the decision was made to initiate the CRADAs.

ORD's fourth proposed action is to withdraw the authority to use the EPA logo in the advertising of CRADA products. We concur with this proposal. However, we have some concern over its effectiveness since many catalogs have already been distributed for 1993. Also, CRADA products will still be advertised as "EPA Certified", setting them apart from similar quality reference materials available in the marketplace. In addition, ORD proposed to begin negotiations to limit sales of the inventory to only those materials meeting the CRADA specifications to be effective by August 1, 1993. Thus, ORD will begin taking steps to ensure the products sold under the CRADAs actually meet the specifications.

The fifth proposed action is to ensure the activities of the company holding both a contract and a CRADA are kept separate. We concur with this effort, but considering the close relationship between the two operations, we are concerned about how the separation will be accomplished. As discussed in the report, this long-term contract effort with EMSL-Cin has resulted in a subsidization of the company's entry into the retail market.

We concur with ORD's sixth proposal to continue evaluating the CRADA operations.

In summary, we believe that the actions proposed by ORD are necessary to determine whether CRADAs are the best way to continue the reference material program. In our opinion, these actions should have occurred prior to establishing these CRADAs which resulted in giving the companies what appears to be carte-blanche authority to market "EPA Certified" materials. In any case, when these analyses are completed, EMSL-Cin should be in a position to determine what materials are available, what materials are not available and need to be produced, and how they should be produced-- through the marketplace, in-house, through contracts, or through CRADAs. For example, if a small quantity of samples are needed they could be produced with in-house resources or by a contractor, or if a specific research project is needed then it could be appropriately performed using a CRADA. The company would be given the marketing rights if they were successful in the research. Until this occurs, we continue to believe that these five CRADAs are inappropriate.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 31 1993

OFFICE OF
THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Management of Extramural Resources at the Environmental Research Laboratory, Athens, Georgia
Audit Report No. E1JBF2-04-0300-3100156 (Revised)

FROM: Kenneth A. Konz
Assistant Inspector General
for Audit

TO: Gary J. Foley
Acting Assistant Administrator
for Research and Development

Christian R. Holmes
Assistant Administrator
for Administration and Resources Management

Attached is the final report entitled "Management of Extramural Resources at the Environmental Research Laboratory, Athens, Georgia (ERL-A)." Our overall audit objective was to evaluate ERL-A's management and use of extramural resources in relation to applicable laws, regulations, and policies.

Over a period of up to 7 years, the audit concluded that ERL-A management had avoided or circumvented laws, regulations and Agency procedures in the award and funding of certain contracts, cooperative (CAs) and interagency agreements (IAGs). ERL-A misused or abused the use of contracts, CAs, and IAGs for the apparent purposes of supplementing inadequate intramural resources and federal staff, retaining long-term on-site contractors, and favoritism to former employees, employers, and alma maters. This misuse and abuse of extramural instruments was promulgated under an ERL-A management culture that apparently encouraged research accomplishments at the expense of statutory, regulatory, and sound procurement and management practices.

Of equal concern, however, is the lack of proper review and oversight of ERL-A extramural activities by the Office of Research and Development (ORD), the Contract Management Division (CMD) - Cincinnati, and the Grants Administration Division (GAD). Inadequate oversight by these Headquarters elements precluded earlier detection and correction of resource management problems at ERL-A.

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Action Required

We have designated the Office of Research and Development (ORD) as the action official for this audit. In accordance with EPA Order 2750, you as the action official, are required to provide this office a written response to the audit report within 90 days of the final audit report date. We also request, that as action official, you coordinate with and obtain a written response from the Assistant Administrator for Administration and Resources Management (OARM) for planned corrective actions related to recommendations for CMD-Cincinnati and GAD. Written responses should indicate milestone dates for any initiated or planned corrective actions.

ORD's response to recommendations in the draft report was considered sufficient to resolve the recommendations made to ORD and ERL-A management. These recommendations and ORD's response are identified in Appendix I.

This audit report contains findings that describe problems the Office of Inspector General (OIG) identified and the corrective actions the OIG recommends. This report represents the opinion of the OIG. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report do not necessarily represent the final EPA position.

If your staff has any questions or needs additional information regarding this report, please have them contact me at 260-1106.

Attachments

EXECUTIVE SUMMARY

PURPOSE

Increasing workloads, without commensurate increases in federal staff and intramural funding, have contributed to a heavy dependence by the Office of Research and Development (ORD) on contractors and other extramural support for accomplishment of its mission. ORD's extramural funding substantially increased between 1987 and 1992 while intramural funding only marginally increased. During the same period federal staff at ERL-A actually decreased while the laboratory's workload more than doubled. Currently, almost 70 percent of ORD's annual fund allocations represent extramural resources. ORD's Fiscal Year (FY) 1990 Federal Managers' Financial Integrity Act (FMFIA) report identified the management of extramural resources as a material internal control weakness. The Agency perceived this program activity as a material weakness due to the substantial lack of EPA staff to properly manage and oversee extramural operations.

EPA has been criticized in prior years by Congress and the public for perceived over-reliance on contractor support to perform many of its critical mission functions. In 1992, OIG's identification of significant contract management weaknesses, related to one of EPA's largest technical support contracts,[1] substantially increased congressional criticism and oversight of EPA's extramural management processes. Some of the serious contract management weaknesses identified in this audit were related to contractor activities at ORD laboratories.

As early as 1983, OIG reported deficiencies in ORD's extramural procurement and management processes. In 1992, following the audit of the Computer Sciences Corporation (CSC) contract and identification of serious contract management problems and conflict of interest situations (COIS) at ORD's Duluth, Minnesota laboratory, OIG initiated joint audit/investigative surveys at several ORD laboratories to assess the full extent of extramural management problems in ORD field units. The OIG survey at the Environmental Research Laboratory - Athens, Georgia (ERL-A) identified problems with the laboratory's solicitation of contracts and other extramural agreements and the overall management and control of extramural resources. As a result of the survey, the OIG initiated an audit of ERL-A and related activities at the Office of Administration and Resources Management's (OARM's) Contract Management Division (CMD), Cincinnati, Ohio, and Grants Administration Division (GAD),

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[1] Audit Report No. E1NME1-04-0169-2100295, "EPA's Management of Computer Sciences Corporation Contract Activities," issued March 31, 1992.

Washington, D.C. The primary objective of the review was to determine if ERL-A, in coordination with CMD and GAD, properly used, administered, and controlled extramural funds to obtain services under contracts, cooperative agreements (CAs), or interagency agreements (IAGS) in compliance with applicable laws, regulations, and Agency directives.

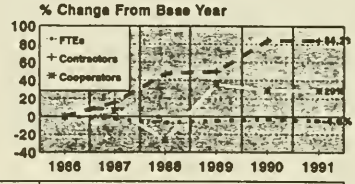
BACKGROUND

With a current annual budget of about $450 million, ORD's primary mission is to provide quality, timely scientific and technical information, products and assistance in support of Agency programs and goals through twelve environmental laboratories which employ about 1,900 EPA staff. ERL-A is one of the 12 ORD laboratories. Although environmental laws, which ERL-A research supports, increased from 2 in the early 1980's to 14 in 1992, ERL-A's EPA staff actually decreased during this same period.

To accomplish the mission with strictly imposed federal employment ceilings, ERL-A and other ORD laboratories have increased their dependency on extramural level-of-effort (LOE) contracts, CAs, and IAGs to conduct or supplement much of their research. Between FYs 1986 and 1991 contractor staff at ERL-A increased from 38 (30 percent of total ERL-A staff) to 70 (44 percent of total staff).

The following chart illustrates ERL-A's tremendous growth in extramural support in relation to EPA staff between 1986 and 1991.

On-Site Staffing Changes/1986 to 1991



	1986	1987	1988	1989	1990	1991
FTEs	0	-2.6	-7	-4.6	-3.2	-4.6
Contractors	0	15.8	47.4	50	84.2	84.2
Cooperators	0	6.5	-25.8	35.5	29	29

ATHENS LAB

Base Year = 1986

ERL-A's FY 1991 budget totaled $14.05 million. Of that, $7.7 million (54.8 percent) was appropriated for extramural research under contracts ($4.11 million), CAs ($2.91 million), and IAGs ($640,000). This included agreements with 5 contractors valued at approximately $4 million which provided 70 full-time contractor employees for laboratory support. Twenty other onsite personnel were provided under CAs and the Senior Environmental Employee (SEE) Program. Contractors, cooperators, and SEE personnel represented about 57 percent of ERL-A's available human resources, providing technical, scientific, and administrative support. In 1992, ERL-A's extramural funding increased to 58.5 percent of its total budget ($9.3 million of $15.9 million). Of this increase, 52 percent was for CAs and IAGs ($3.55 million in 1991 to $5.4 million in 1992). However, IAGs increased over 228 percent between 1991 and 1992 ($640,000 to $2.1 million).

With this level of dependency on extramural support, strong management controls were necessary to offset inherent contracting risks and the potential for fraud, waste, and abuse of federal resources. However, Agency managers either did not establish or properly implement the control systems needed to adequately protect against such risks. At ERL-A the priority of good contract management and control was lost among the high-priority scientific endeavors emphasized by research-oriented personnel.

RESULTS IN BRIEF

ERL-A's apparent lack of intramural funding, coupled with a management emphasis on mission accomplishment by any available means, encouraged ERL-A's circumvention, avoidance, and noncompliance with laws, regulations, and Agency policies related to the use and funding of extramural contracts and agreements. The circumvention and avoidance of competitive awards and apparent favoritism toward certain contractors and institutions appeared to be accepted practices at ERL-A. Questionable uses of extramural resources, combined with heavy dependence on extramural support for critical functions and weak management controls, elevated ERL-A's vulnerability to wasteful, abusive, and potentially illegal practices. In addition, ERL-A's lack of control over extramural support agreements provided inadequate assurance as to the quality of the oversight of related research and the effective use of scarce Agency resources. Of equal concern, however, was the obvious lack of controls, oversight, and review of ERL-A extramural activities by ORD, CMD-Cincinnati, and GAD.

Misuse and/or abuse of contracts, CAs, and IAGs by ERL-A occurred

over extended periods of up to 7 years. Questionable use or abuse of extramural resources was identified in all 5 contracts, 11 CAs, and 6 IAGs (maximum potential value of $44 million) reviewed during the audit. ERL-A improperly used extramural resources in: (1) awarding repetitive sole-source 8(a) contracts and related contract modifications to avoid competition and retain long-term on-site contractors and contractor staff, (2) splitting and underestimating contract requirements to avoid 8(a) dollar limit for sole source contracts and to avoid competitive award, (3) supplementing inadequate intramural funding and federal staff, (4) awarding an IAG to a foreign government without authority, (5) using IAGs to exchange extramural research funds with another Agency principally for federal employee travel, (6) awarding, primarily noncompetitively, assistance agreements for the direct benefit of ERL-A research projects. When competitive procedures were used, ERL-A biased the competition or compromised the award procedures through potential CoIs of those who evaluated proposals.

In addition, improper uses of about $210,000 in Salary and Expense (S&E) funds and Superfund monies for acquisition and erection of an office building and excessive travel costs were also disclosed during our review of ERL-A's extramural resource activities (see Chapter 5).

PRINCIPAL FINDINGS

EPA'S MANAGEMENT CONTROL SYSTEMS DID NOT DETECT OR PRECLUDE ERL-A'S CONSISTENT ABUSES AND MISMANAGEMENT OF EXTRAMURAL RESOURCES

Our review of ERL-A's use and management of extramural resources involving the award of $44 million in contracts, CAs, and IAGs revealed frequent avoidance or noncompliance with statutes, regulations, policies and guidance that governed the acquisition, use, and management of contracts and assistance agreements (see Chapters 3 and 4). Questionable award and/or use of extramural resources were found in all 5 contracts, 11 CAs, and 6 IAGs reviewed. ERL-A's questionable actions were initially encouraged by the lack of intramural resources, including the FTEs (federal staff) needed to accomplish the laboratory's increasing research missions. Over a long period of growing extramural support but limited intramural funding and decreased EPA staff, ERL-A's activities evolved into a sequence of questionable awards and uses of extramural funds. Inadequate oversight by CMD-Cincinnati, GAD, and ORD, all contributed to ERL-A's misuse and abuse of extramural resources. A lack of written guidance and conflicting, incorrect guidance from these same three

headquarters' elements, contributed to ERL-A's confusion as to the proper use of extramural support and assistance mechanisms. Overall, the management control systems needed to provide reasonable assurance that ERL-A's use and management of extramural resources was carried out in accordance with applicable statute, regulation, and EPA policy were either not established or not working. As a result, procurement and assistance laws were abused and the overall use and management of extramural resources was not adequately managed and controlled.

MISUSE AND MISMANAGEMENT OF COOPERATIVE AND INTERAGENCY AGREEMENTS

Our review of 11 CAs ($11.15 million maximum value) and 6 IAGs ($1.3 million maximum value)[2] disclosed that in all 17 extramural agreements, ERL-A managers: (1) improperly used less restrictive CAs and IAGs to procure goods and services in lieu of the more controlled contracting process, (2) did not encourage the competitive award of CAs, (3) exhibited apparent favoritism in noncompetitive CA awards, and (4) did not effectively manage CAs to assure compliance with terms of extramural agreements or that government assets were safeguarded against waste or abuse. ERL-A staff apparently sacrificed adherence to statutory requirements and ORD policies and procedures to supplement inadequate intramural resources. In addition, ERL-A seemed unaware of the proper criteria for determining the use of CAs versus contracts. As discussed in Chapter 2, inadequate and inconsistent guidance from GAD and ORD Headquarters contributed to ERL-A's confusion over the proper use and selection of extramural agreements. Further, ORD and GAD oversight of ERL-A operations was insufficient to prevent misuse and mismanagement of extramural resources by ERL-A. ERL-A's misuse and mismanagement of extramural agreements resulted in a lack of assurance that the research performed under these agreements was properly overseen and that government resources were adequately controlled and effectively utilized.

Several deficiencies related to ORD's CA award and management processes had been previously identified by a 1983 OIG audit of ORD's CA program.[3] Nine years later these problems remained

[2] ERL-A CAs and IAGs included in our sample, along with award dates and potential values, are shown in Appendix III.

[3] Audit Report No. E1GB2-11-0019-30828, "Review of the Office of Rearch and Development's Extramural Research Activities", issued March 31, 1983.

uncorrected at ERL-A. Based on our review at ERL-A, corrective action taken on the prior audit was both inadequate and ineffective because ORD issued faulty guidance, ERL-A ignored some of the controls instituted by ORD and ORD failed to oversee and ensure proper implementation by its laboratories.

ERL-A ABUSED CONTRACTING PROCESS TO RETAIN LONG-TERM CONTRACTORS AND AVOID FULL AND OPEN COMPETITION

In all five on-site support contracts reviewed (maximum value of $31.6 million), ERL-A abused the procurement process to retain favored contractors and their employees and then utilized these same contracts to perform prohibited contracting activities. To obtain desired contracts and related services, ERL-A either avoided or biased the competitive procurement process for all five contracts.[4] Over the last six to seven years, ERL-A avoided competition by using the 8(a) set-aside program to obtain repeated sole-source acquisitions with current contractors. By using the 8(a) non-competitive process, ERL-A prevented: (1) the interruption of on-site contractor services and the loss of contractor staff providing long-term technical/administrative support, and (2) the additional administrative burden required under a competitive procurement. After one incumbent contractor at ERL-A no longer qualified for small business 8(a) status and related sole-source awards, the contract was removed from the 8(a) set-aside program, without adequate justification, to allow the incumbent an opportunity to compete. Then, during the follow-on "full and open" competition, ERL-A biased the procurement in favor of the incumbent. In another 8(a) set-aside procurement, ERL-A split and underestimated procurement requirements and costs to avoid the 8(a) competitive threshold and justify sole-source awards. Further, ERL-A improperly used these on-site contractors to supplement its in-house human resource needs. ERL-A's substantial dependency on on-site contractors, especially long-term contractor employees, to accomplish its mission resulted in less than arms-length relationships between ERL-A and contractor staff, including prohibited personal services and favored treatment toward incumbent contractors, and ERL-A ignoring the benefits that "full and open" competition brings to the procurement process. While ERL-A's questionable approach may have been within the "best intentions" of mission accomplishment and the financial interest of incumbent contractors, the Agency is left unsure that its

[4] Contracts include the three contracts in our sample which were subjected to indepth review and the limited review of two related predecessor contracts.

scarce resources have been effectively utilized to obtain only needed services at the least cost.

CIRCUMVENTION OF STATUTORY AND REGULATORY REQUIREMENTS EXTENDED INTO USES OF INTRAMURAL RESOURCES

Our review of extramural resource management at ERL-A also disclosed questionable uses of intramural resources and a potential violation of appropriation law restrictions. These questionable actions related to the improper acquisition and construction of an office building with S&E appropriated funds and Superfund monies and the payment of excessive travel costs. The building was obtained through a fiscal year-end contract award. These questionable uses of intramural resources indicated that the circumvention of laws and regulations and misuse of resources was not restricted to extramural funds.

ERL-A'S FMFIA PROCESS DID NOT ENSURE PROPER CONTROL OVER EXTRAMURAL RESOURCE MANAGEMENT

ERL-A's FMFIA process did not adequately identify internal control weaknesses or ensure proper implementation of FMFIA control objectives and techniques relative to the management of contracts, CAs, IAGs and other support/administrative activities that came to our attention during the audit. Many material control weaknesses in ERL-A's extramural resource and administrative activities were not previously identified in ERL-A's FMFIA risk assessments. In addition, ERL-A had not adequately assessed control techniques to ensure proper implementation by management staff. Critical control techniques identified in ERL-A's FMFIA documentation were either not implemented or improperly implemented by ERL-A management. As a result, there was insufficient assurance that Agency resources were safeguarded against waste, fraud, abuse, and conflicts of interest. Because many of ERL-A's extramural activities were of a mission-critical nature, proper control of the extramural and administrative operations were essential to the integrity of the Agency's programs.

MISSING RECORDS AND INCONSISTENT STATEMENTS BY ERL-A, CONTRACTOR, AND COOPERATOR STAFFS DELAYED AND POTENTIALLY LIMITED AUDIT DISCLOSURE

During our audit, several impediments were encountered at ERL-A that hampered the accomplishment of audit fieldwork and may have limited our assessment of laboratory operations. Impediments included: (1) inconsistent (often contradictory) statements by ERL-A staff, contractors, and cooperators and (2) missing

documentation in ERL-A's contract/cooperator and/or laboratory correspondence files. In some cases, the inaccurate statements made by ERL-A employees, contractors, and cooperators appeared to be "textbook" answers to our questions rather than answers that accurately reflected ERL-A day-to-day operations. Evidence obtained indicated that ERL-A staff had been briefed prior to start of audit fieldwork as to our audit objectives and the "correct" answers to our questions. Also, some of the missing records could be attributed to ERL-A's improper record retention procedures. However, according to certain ERL-A managers, the laboratory was seriously concerned about the negative impact of our audit on ERL-A's operations and, in particular, about the effect on contractors that worked at the laboratory. This concern was based on the impact of the recent OIG audit of Duluth ERL on that laboratory's operations. The missing records and conflicting statements necessitated alternative record reviews and additional interviews which would not have been necessary if full disclosure had been made when questions were first asked. These impediments significantly delayed completion of audit fieldwork and left us unsure that all pertinent information and conditions had been disclosed.

RECOMMENDATIONS

ORD, as well as CMD and GAD need to substantially strengthen their oversight and control over the procurement, award, and use of extramural resources at ERL-A to decrease the Agency's vulnerability to abusive, and wasteful practices, ensure compliance with applicable laws, regulations and policies, and establish effective use of Agency resources. In addition, ERL-A's vulnerability from over-reliance on contractor and cooperators for performance of mission critical functions needs to be reduced. Risk reduction can be achieved through increased use of EPA staff to perform critical laboratory technical operations and to retain Agency expertise and control over these vital research activities. ERL-A staff's awareness of the proper ethical conduct of government business needs to be increased. ERL-A management should also be advised that laws, regulations, and policies governing the use and management of extramural resources were established to protect the government's interests and to safeguard government resources. Circumvention or noncompliance with these requirements cannot be tolerated.

AGENCY COMMENTS

ORD generally agreed with the findings and those recommendations made to ORD management. OARM did not agree with many of the findings related to CMD - Cincinnati contract oversight and 8(a)

noncompetitive and subsequent competitive awards to one on-site ERL-A contractor. Also, OARM expressed some disagreement with certain statements and conclusions related to GAD oversight and approval of certain IAGs and CAs at ERL-A. However, OARM did agree with most of the recommendations related to CMD-Cincinnati and GAD operations. Both ORD and OARM responses included substantive planned or initiated corrective actions to correct the deficiencies identified. Because ORD included milestone dates for completion of initiated or planned actions, most of the recommendations to ORD will be resolved upon issuance of this report.

ORD and OARM responses to the report's findings and recommendations have been summarized at the end of each appropriate report chapter along with OIG's evaluation of these responses. Agency responses to each individual recommendation and any planned and initiated corrective actions or additional Agency actions needed for resolution of each recommendation are presented in Appendix I. ORD and OARM's complete responses to the draft report's findings and recommendations are available upon request from the Office of Inspector General.

United States
Environmental Protection
Agency

July 7, 1992

EPA

Report of Audit

Contracting Activities at Environmental Research Laboratory Duluth

Audit Report No. E1JBF1-05-0175-2100443

July 7, 1992

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EXECUTIVE SUMMARY

PURPOSE

The Office of Inspector General decided to perform a review of contracting at the Agency's Environmental Research Laboratory - Duluth, Minnesota (Duluth) as a pilot effort for EPA research facilities. Our decision was based on indicators found during an initial joint survey conducted by our Northern Audit and Investigations Divisions. Our specific audit objectives were to:

- o evaluate the development and award of Duluth's support service contracts,
- o determine the use and control of work assignments issued under the Duluth toxicological support service contracts, and
- o determine if Duluth employees' Confidential Statements of Employment and Financial Interests (Confidential Statements) were being appropriately filed and reviewed.

BACKGROUND

Duluth, one of twelve Office of Research and Development (ORD) laboratories, conducts research in aquatic toxicology and freshwater ecology. Duluth's mission is to develop a scientific basis for EPA to create environmental policies concerning the use of freshwater resources. The Office of Administration and Resources Management (OARM), Cincinnati Contracts Management Division (Cincinnati) has contracting officers who award and administer Duluth's contracts, with the assistance of project officers and work assignment managers (WAMs) in Duluth. Both Duluth and Cincinnati receive guidance on ethics from the Designated Agency Ethics Official (DAEO), who is located within the Agency's Office of General Counsel (OGC).

Since 1986, EPA has contracted with AScI Corporation (AScI) to provide scientific support services for Duluth.[1] AScI's six Duluth contracts have maximum values totalling about $21 million (see Exhibit 1). Some of AScI's contracts fall under the Small Business Administration's (SBA) Section 8(a) Contracting and Business Development Program (8(a)).

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[1]AScI was originally incorporated as American Scientific International, Inc. In March 1989 it changed its name to AScI Corporation. For clarity, we use AScI throughout this report.

Director's former spouse and that this Director was actively involved in the procurement. However, the files showed no action by Cincinnati to resolve this additional conflict.

Existing Chemical Analysis Contract Allowed To Lapse And $4.5 Million Contract Awarded To AScI In 1989

In 1989, EPA allowed the remaining two years of an existing three-year contract with UWS to lapse. Concurrently, EPA awarded AScI a three-year contract worth about $4.5 million to perform similar work at Duluth. UWS became AScI's prime subcontractor on this new contract. The contract provided Duluth with essentially the same services that it received under the UWS contract, but at a higher cost to the Government. The condition occurred because the Duluth Director became involved in the bidding process and discouraged UWS from submitting a bid. He also encouraged UWS to become a subcontractor to AScI. As a result, AScI gained a competitive advantage over other potential bidders.

At the time of the award, the Duluth Director's spouse served as AScI's registered agent. Immediately, after EPA awarded AScI the contract, the Duluth Director's spouse was hired as the firm's only in-house attorney. The Duluth Director's actions resulted in, or created the reasonable appearance of, giving preferential treatment to AScI. As a result of allowing the UWS contract to lapse, we estimate that the Government paid about an additional $300,000 for essentially the same services.

$9 Million In Toxicological Contract Awards To AScI In 1990 Were Not Competitively Bid

In 1990, EPA (through SBA) awarded AScI, an 8(a) contractor, three sole-source contracts that totalled over $9 million, deliberately avoiding competition. Duluth officials proposed multiple contracts because the Duluth Director wanted: (1) the incumbent contractor to continue working at Duluth on all three contracts, and (2) to avoid worrying contractor personnel about job security. The Duluth Director's actions result in, or create the reasonable appearance of, giving preferential treatment to AScI, which employed his current spouse. Contracting officials approved and processed the three contracts as a group, knowing that Duluth's estimates were just under the competitive threshold. In doing so, the contracting officials did not fulfill their responsibilities to ensure adherence to applicable laws and regulations before entering into contracts. As a result of awarding the contracts sole-source, EPA did not provide other 8(a) firms the opportunity to bid, and cannot be assured that the contracts were awarded in the best interest of the Government. The Business Opportunity Development Reform Act

of 1988[2] requires that the Government competitively bid all 8(a) service contracts that have an estimated value over $3 million.

EPA's actions in awarding the contract are particularly questionable in light of personal conflicts of interest created by the Duluth Director in procuring and managing the AScI contracts. Even though his spouse has served as AScI's only in-house attorney since October 1989, the Duluth Director did not distance himself from issues which might create a conflict of interest. Instead he specifically involved himself in the procurement and management decisions which led to AScI's being given more than $142,000 of award fees.

Work Assigned To AScI Was Not Included In Work Assignments Or The Scope Of The Contracts

For several years, Duluth and Cincinnati officials allowed AScI to conduct work at Duluth that was either not included in the contracts' scope of work or in work assignments. This work included remodeling and maintenance tasks for AScI, the toxicological support services contractor. Duluth officials believed that their actions were justified as long as Duluth benefitted. Cincinnati contracting officers: (1) did not enforce Agency regulations prohibiting work to start prior to their written approval; and (2) approved the work assignments without reading them, even though the work was not allowable under the contracts' terms. As a result, contracting officers committed the Government to expend funds for unauthorized services. The Duluth contracts clearly forbid AScI from performing: (1) work until the contracting officer gives written authorization, and (2) additional duties not within the scope of the contract.

Duluth Employees' Confidential Statements Were Incomplete

The Deputy Ethics Official (DEO), who is the Duluth Director, did not direct project officers at or below the grade 12 level to file Confidential Statements. Additionally, the DEO did not ensure that Duluth employees disclosed their spouses' employment with organizations doing business with Duluth. Because statements were (1) not filed, or (2) incomplete as to spousal employment, the DEO could not determine whether actual or apparent conflicts of interest existed. Therefore, Duluth's 1990 annual certification was inaccurate and incomplete. EPA regulations and an Agency Ethics Advisory both emphasize to DEOs that employees, such as project officers, whose duties directly affect the financial interests of specific parties, should be required to file Confidential Statements.

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[2]P.L. 100-656, Sec. 303(b), codified at 15 U.S.C. 637(a)(1)(D)

In addition, the Agency did not require WAMs to file Confidential Statements. WAMs prepare work assignments for contractors, and monitor the contractors' performance. Therefore, WAMs can influence a contractors' work and award fees.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL EVALUATION

The OARM and ORD Assistant Administrators and the DEAO were in substantial agreement with our report, and have already acted, or have agreed to act, to resolve the issues raised in this report.

The only substantive area of disagreement concerned the awarding of the $4.5 million 1989 contract for chemical analysis to AScI. OARM and ORD disagree with our finding that the contract was for essentially the same work that had been performed under the UWS contract. Our main point remains that both before and after the new contract, the same UWS employees continued to perform essentially the same work, but at an increased cost. This higher cost, which we estimate at about $300,000, went to AScI. This is a firm with which the Duluth Director had a conflict of interest.

RECOMMENDATIONS

OARM and ORD actions have resolved the issues raised in this report that relate to them. The Designated Agency Ethics Official has proposed actions that, when implemented, will resolve many of our concerns. In part, the additional actions depend upon the Office of Government Ethics, another government agency, issuing new regulations. These regulations are expected shortly, but since their issuance is outside EPA's control, the DAEO has agreed to put in place interim measures if the regulations are not issued by August 15, 1992. However, additional actions on his part are needed. Our recommendations are summarized below and are detailed in the body of our report.

We recommend that the Designated Agency Ethics Official:

1. Define substantive ethics advice, and require that Deputy Ethics Officials maintain written records when they give employees substantive ethics advice.

2. Put in place interim procedures or Ethics Advisories, if the Office of Government Ethics proposed regulations are not finalized by August 15, 1992.

3. Establish a procedure that requires supervisors of Senior Executive Service

employees to be informed, in writing, of any discussions or decisions regarding potential conflicts of interest.

4. Require the Deputy Ethics Officials to be at least biannually trained and certified regarding Government ethics laws and regulations.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 16 1993

OFFICE OF
THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Audit Report No. E1JBF2-01-0275-3100236
Management of Extramural Resources at the Environmental Research Laboratory, Narragansett, Rhode Island

FROM: Kenneth A. Konz
Assistant Inspector General for Audit

TO: Gary J. Foley
Acting Assistant Administrator for
Research and Development

Sallyanne Harper
Acting Assistant Administrator for
Administration and Resources Management

Attached is the final report entitled "Management of Extramural Resources at the Environmental Research Laboratory, Narragansett, Rhode Island (Narragansett)." This report provides important findings and recommended corrective actions regarding the operations of the Environmental Research Laboratory - Narragansett.

This audit report contains findings that describe problems the Office of Inspector General (OIG) identified and the corrective actions the OIG recommends. This report represents the opinion of the OIG. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report do not necessarily represent the final EPA position.

The management at Narragansett did not operate the laboratory with effective management controls in place, to ensure the integrity of its operation. Narragansett officials mismanaged administrative aspects of the laboratories' operations. These included improper contract procurement and management practices; misuse of research contracts, cooperative agreements, and interagency agreements; abuses in time and attendance policies; improper use and lack of controls over the laboratories' imprest fund; and failure to comply with Agency ethics regulations.

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Action Required

ORD's and OARM's responses to the recommendations in the draft report were considered sufficient to resolve the recommendations made to ORD and Narragansett management. In responding to the draft report, the Agency provided actions plans and milestone dates for correcting the findings. As a result, we are closing this report in our tracking system, effective June 16, 1993. Please track all action plans and milestone dates in the Agency's Management Audit Tracking System. The recommendations and ORD's and OARM's responses are identified in Appendix A.

Should your staff have any questions regarding this report, please have them contact Paul D. McKechnie, Divisional Inspector General for Audits, Eastern Division, at (617) 565-3160.

Attachments

EXECUTIVE SUMMARY

PURPOSE

The Office of Inspector General (OIG) has completed an audit of selected segments of the operations of the Office of Research and Development's (ORD) Environmental Research Laboratory-Narragansett (Narragansett), located in Narragansett, Rhode Island, and its sub-office located in Newport, Oregon. Based on abuses in contract management identified in recent audit work performed at the EPA Office of Research and Development's Environmental Research Laboratory located in Duluth, Minnesota,[1] we performed a survey of the Narragansett Laboratory, in April 1992. The results of the survey[2] concluded that an audit of the laboratory's operations was warranted. This audit report contains the results of audit and our opinions.

The objectives of the audit were to determine whether Narragansett:

- properly used contracts, interagency agreements, and cooperative agreements as intended to augment the Agency's research mission;
- complied with applicable laws, regulations, and directives when procuring extramural services;
- managed contracts to ensure that contractor performance was in compliance with contract provisions and the statement of work;
- provided effective oversight of contractor performance to ensure the laboratory accomplished its primary work goals and objectives;
- established effective management controls over the laboratory's impress fund, time and attendance activities, educational benefits, and Employee Confidential Statements; and

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[1] OIG Audit Report No. E1JBF1-05-0175-2100443, "Contracting Activities at Environmental Research Laboratory Duluth," issued July 7, 1992.

[2] OIG Survey Report No. E1BMG2-01-0372-3400006, "Contracting Activities at The Environmental Research Laboratory Narragansett, RI", issued December 1, 1992.

- complied with applicable record retention regulations.

BACKGROUND

The mission of the Office of Research and Development and its Environmental Research Laboratory System is to provide high quality, timely scientific and technical information, products and assistance in support of Agency programs and goals. The Agency's research program is conducted through twelve environmental laboratories across the country employing some 1,900 people, with an annual budget of approximately $450 million. ORD's overall planning process engenders an applied research and development program focused on answering key scientific and technical questions related to EPA's decision-making. Short term scientific and technical studies support immediate regulatory and enforcement decisions while a longer-term core research program extends the knowledge base of environmental science and anticipates environmental problems.

To assist in accomplishing its research mission, ORD utilized extramural level-of-effort (LOE) contracts, grants, cooperative agreements, and interagency agreements to conduct or supplement much of its research. For example, Narragansett used $9.7 million of its $15.1 million fiscal 1991 appropriation for extramural activities. This included agreements with five contractors[3] [either procured and managed through the Contract Management Division (Cincinnati)in Cincinnati, Ohio or by the Office of Administration and Resources Management (OARM) in Headquarters] worth approximately $6.6 million which provided 134 full-time contractor employees for Narragansett. Additional full time equivalents (FTEs) were provided through cooperative agreements (CA) with the University of Rhode Island (6 positions), Oregon State University (3 positions) and the National Council of Senior Citizens - Senior Environmental Employee Program (23 positions). These extramural funded positions provided the laboratory with both high-technology

[3] The five contractors: Science Applications International Corp. (SAIC); Colejon Mechanical Corp.; AScI Corp; Computer Sciences Corp. (CSC); and Team Support Services.

support and scientific expertise. They represented nearly two-thirds of Narragansett's human resources.

RESULTS IN BRIEF

The management at Narragansett did not operate the laboratory with effective management controls in place, to ensure the integrity of its operation. Narragansett officials mismanaged administrative aspects of the laboratories' operations. These included improper contract procurement and management practices; misuse of research contracts, cooperative agreements, and interagency agreements; abuses in time and attendance policies; improper use and lack of controls over the laboratories' imprest fund; and failure to comply with Agency ethics regulations.

PRINCIPAL FINDINGS

APPEARANCE OF INCUMBENT FAVORITISM IN THE PROCUREMENT OF CONTRACTS

Narragansett management and Agency officials did not fulfill all of their responsibilities to ensure that three contracts were fairly awarded. Based on our review of the three contracts, we found strong indications of the appearance of favoritism, cost underestimating, and lack of competition to justify awarding the contract to incumbent contractors. As a result, competition for the award of these contracts was restricted. This, in turn, reflected unfavorably on the Agency's responsibility to maximize full and open competition.

These actions provided the appearance that Narragansett management was willing to compromise the integrity of the Agency's procurement system and Federal Acquisition Regulations (FAR) to ensure that the incumbent on-site contractor would be retained. These actions included: tailored request for proposal (RFP) requirements; changed contract method; and underestimated contract amount. As a result, actual full and open competition was compromised as it related to the procurement and awarding of these contracts. These actions further damaged the Agency's

ability to obtain competitive proposals, negotiate favorable terms, and ensure the integrity of the Agency's procurement process. These actions were caused by Narragansett's concern with accomplishing its mandated mission, and its belief that procurement of a contract with a new contractor would ultimately set back the accomplishment of the laboratory's mission.

MISUSE OF EPA RESEARCH CONTRACTS, COOPERATIVE AGREEMENTS, AND INTERAGENCY AGREEMENTS

Narragansett performed a substantial portion of its mission through questionable contractual and cooperative relationships. Narragansett circumvented various Congressional, statutory, and Agency constraints on the use of these extramural resources. As a result, we found examples of activities at Narragansett, that in our opinion, violated the intended purpose of the contracts and assistance agreements.

These activities included inappropriate use of:

- Research and Development appropriations to fund contractor work;
- Interagency Agreements to serve as a conduit to fund foreign nationals' travel;
- Cooperative Agreements used to support a day care center; and
- EPA's Education Policy used to obtain advanced degrees.

Narragansett senior management stated that these activities occurred because of their belief that the mission of the laboratory was paramount. Further, they stated that they wanted to get the job done through the most convenient means. This resulted in the use of various mechanisms that, in our opinion, were not intended for the purpose utilized by Narragansett.

- For the 17 month period ending May 31, 1992, Narragansett expended $43,741 of Research and Development operating funds for materials and supplies used by a contractor to prevent that contractor from exceeding its authorized budget limit.

That contract specifically states that the contractor shall furnish all material and supplies.

- Narragansett improperly utilized an interagency agreement (IAG) with the Department of Commerce-National Oceanic and Atmospheric Administration (NOAA) to pay for travel expenses which brought foreign national scientists to the laboratory as part of a joint project. In our opinion, this a clear circumvention of the EPA guidance on international activity.
- Narragansett utilized a cooperative agreement (CA) to pay for a teacher's salary, used extramural funds for custodial services, and used research and development operating funds for renovations of a day care center. Further, the day care center provided care for less than the mandated 50 percent of children of Federal employees. At the time of our initial contact with Narragansett, only three of the 23 children cared for were children of Federal employees.

- Agency funds were improperly used for the purpose of providing an opportunity for EPA employees to obtain advanced academic degrees. These actions circumvented Federal statutes, Agency policy, and the Federal Personnel Manual. The Narragansett Laboratory Director encouraged the use of Agency funds to obtain advanced degrees for his employees. As a result, we identified six employees who were enrolled in advanced degree-granting programs with the primary purpose of obtaining an advanced degree.

CONTRACT MANAGEMENT CONTROLS WERE INADEQUATE

The project officers at Narragansett did not properly manage the work and activities performed by its contractors. The project officers: (1) allowed contract employees to perform inherently governmental functions; (2) did not control contractor costs; and (3) did not monitor contractor work in process.

These conditions were allowed to occur, because even though the project officers were certified, they did not carry-out their responsibilities. One project officer abdicated control over the contract to the contractor, and the Narragansett Laboratory Director was insulated from contract management issues. Further,

deficiencies occurred in part because of vaguely written statements of work, insufficiently developed work assignments, lack of consistent Agency directives and insufficient time spent on contractor oversight. As a result, contract management was materially deficient, which resulted in numerous contract management and control deficiencies.

INAPPROPRIATE USE AND CONTROL OF THE IMPREST FUND

Narragansett did not have adequate controls to ensure that the day to day operation of the imprest fund was properly managed in accordance with applicable government regulations. As a result, we found that the fund lacked proper accountability, and was a mechanism to fund questionable procurement activities. These improprieties included: purchases from family members of laboratory employees; purchases from an on-site contractor-employee owned firm; repetitive purchases for services that should have been procured via another process; missing documentation; and lack of control over receipt of reimbursements. In many cases these actions were allowed to occur because, in the view of Narragansett management, convenience for the requestor and the vendor was more important than proper accountability. The failure to properly control the operation of the imprest fund resulted in activity that has the appearance of preferential treatment toward family members and to an on-site contractor-employee owned firm.

ENFORCEMENT OF TIME AND ATTENDANCE POLICIES

Narragansett officials did not ensure that all Agency time and attendance regulations and policies were enforced. The lack of effective oversight of this important function resulted in abuses to the system. As a result, we found: (1) several employees were receiving "unofficial" compensatory time and subsequently charging this time as opposed to their leave balances; (2) the branch chief who supervised these employees authorized the "unofficial" compensatory time although he was aware EPA policy was being violated; (3) employees were instructed to fill out leave slips to protect themselves in case of accident and when the leave was completed the slips were subsequently destroyed; (4) the project officer for the Colejon contract was not working

a full day as required; and (5) the project officer's supervisors allowed the practice to continue, even though they were aware of the violation.

Narragansett management officials did not enforce the Agency's time and attendance policies in these cases which raises questions of the integrity of the laboratory's complete time and attendance process.

NARRAGANSETT EMPLOYEES' CONFIDENTIAL STATEMENTS WERE INCOMPLETE

The Deputy Ethics Official, who is the Narragansett Laboratory Director did not: (1) direct a project officer (GS-12), to submit a Confidential Statement of Employment and Financial Interest; (2) ensure all outside employment was approved in advance; (3) ensure that fiscal 1991 statements were retained; and (4) ensure Narragansett employee confidential statements on file for the March 1992 update were complete. The March 1992 statements were incomplete because employees did not disclose the financial and employment interests of spouses and minor children; and accurately complete position titles and dates of position appointments.

EPA regulations and Agency Ethics Advisories emphasize to Deputy Ethics Officials that employees, such as project officers, whose duties directly affect the financial interests of specific parties, should be required to file complete and accurate confidential statements. The Narragansett Deputy Ethics Official had not established effective internal management controls to ensure employee confidential statements were accurately and timely completed in accordance with Agency regulations. The Deputy Ethics Official was also unaware that project officers below the grade of GS-13 were also required to complete confidential statements. As a result, a project officer who was working as a town inspector during the day, did not file a confidential statement (see Chapter 6), employees' spouses worked for on-site contractors, and the potential exists that conflict of interest issues may have existed at Narragansett without the knowledge of the Deputy Ethics Official because statements were not filed, or were incomplete when filed.

EXECUTIVE SUMMARY

FILES AT NARRAGANSETT PURGED BEFORE OIG REVIEW

During our review of the selected contract files, Narragansett officials were unable to provide us documentation relating to the development of the decision to request the procurement of these contracts or with support for alleged instructions from Cincinnati. We were advised that this type of information, including records of correspondence, procurement, and administration of these contracts was maintained in the official contract files in Cincinnati. We were advised that all records (i.e., notes, correspondence, etc.) were not maintained in Narragansett files. During the week of March 9, 1992, (less than three working days after the OIG's initial contact with the Narragansett Laboratory Director, regarding our pending review) the Narragansett Director of Research and Administrative Support Services told staff members involved in contract management at Narragansett, what documents should be located in the contract files, and to remove and shred items that were already located in the official files in Cincinnati. This order was given without the knowledge of the Narragansett Laboratory Director. We were advised that Narragansett project officers and work assignment managers were told to shred duplicate items, any extraneous information, Confidential Business Information, and documents that should be maintained at Cincinnati. Project Officers advised us that they did not verify whether documents to be destroyed were located in Cincinnati before destroying the documents.

In our opinion, the timing of the destruction of these documents provides the appearance that some Narragansett officials may have been attempting to impede our audit of the Laboratory. This observation was shared by staff members at the Laboratory. The Chief of the Ecosystems Branch stated he saw several bags of shredded material, and advised during a Laboratory senior management team meeting, that he thought it was "stupid" to shred files, especially the week before the OIG visit. He further stated that another Narragansett branch chief agreed with him. As a result of these actions, we have no assurance that we have reviewed all documents relating to the procurement or administration of the contracts we audited.

Narragansett and Contract Staff Coached

The Director of Research and Administrative Support Services also provided pre-audit briefing sessions with both the Narragansett staff and with on-site contractor staff. During these sessions the staffs were coached regarding their roles and responsibilities in the contract management process. They were further advised of allowable and unallowable contract activity. Areas such as personal services, conflicts of interest, and work assignments were discussed.

As a result of these two actions, we have no assurance that information that should have been made available for our review was provided. Further, extensive additional audit effort was required in an attempt to mitigate these impediments.

RECOMMENDATIONS

The following are our key recommendations. Additional recommendations are contained in the body of the report.

We recommend that the Assistant Administrator for the Office of Research and Development direct the Narragansett Laboratory Director to:

- Implement existing procedures to ensure that contracts are competitively bid.
- Develop procedures to ensure that Research and Development funds are used for their designated purpose in accordance with laws, regulations, and applicable EPA policies and directives.
- Appoint qualified Project Officers to ensure that all work performed by contractors is authorized in accordance with applicable laws, regulations, and EPA policies and directives and within the contract's Statement of Work.
- Review all current work assignments for compliance with the contracts' statement of work.

EXECUTIVE SUMMARY

- Establish procedures to periodically verify the accuracy and validity of contractor payment requests.
- Strengthen controls to ensure the proper use and accountability of the imprest fund.
- Ensure that laboratory employees are aware of and adhere to Federal time and attendance policies. This policy should be emphasized by the Laboratory Director periodically throughout the year.
- Direct all Narragansett employees who should be required to file Confidential Statements of Employment and Financial Interests to do so. Improve procedures to ensure that these statements are properly completed and timely filed as prescribed by EPA regulations and directives.
- Inform all staff, contractors, and on-site cooperators that deliberate obstruction of a Federal audit or destruction of Federal records without proper approval is improper under 18 U.S.C. 1516

AGENCY COMMENTS TO THE DRAFT REPORT

The Acting Assistant Administrator's for the Office of Research and Development and the Office of Administration and Resources Management were in agreement with our report, and have already acted, or have agreed to act, to resolve the issues raised in this report. Their entire response to the report is located in Appendix A.

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